

**CITY OF NEWARK  
DELAWARE**

**PLANNING COMMISSION  
MEETING**

**October 6, 2009**

**7:00 p.m.**

Present at the 7:00 p.m. meeting were:

**Chairman:** James Bowman

**Commissioners Present:** Ralph Begleiter  
Peggy Brown  
Angela Dressel  
Mary Lou McDowell  
Kass Sheedy

**Commissioners Absent:** Rob Osborne

**Staff Present:** Roy H. Lopata, Planning and Development Director  
David Athey, Councilman, District 4  
Rick Vitelli, Electric Director

Chairman James Bowman called the Planning Commission meeting to order at 7:00 p.m.

**1. THE MINUTES OF THE SEPTEMBER 1, 2009 PLANNING COMMISSION MEETING.**

There being no additions or corrections, the minutes of the September 1, 2009 Planning Commission meeting were accepted as received.

**2. ELECTION OF OFFICERS.**

Chairman Jim Bowman: The current Planning Commission Officers are Elizabeth Dowell, Secretary; Ralph Begleiter, Vice Chair; and Jim Bowman, Chairman. The Chair will entertain a nomination for Secretary to the Planning Commission.

MOTION BY SHEEDY, SECONDED BY DRESSEL TO NOMINATE ELIZABETH DOWELL AS SECRETARY TO THE PLANNING COMMISSION.

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, SHEEDY

NAY: NONE

ABSENT: OSBORNE

MOTION PASSED UNANIMOUSLY

Mr. Bowman: The Chair will entertain a nomination for Chair of the Commission.

MOTION BY DRESSEL, SECONDED BY BEGLEITER TO NOMINATE JAMES BOWMAN AS CHAIRMAN OF THE PLANNING COMMISSION.

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,  
SHEEDY  
NAY: NONE  
ABSENT: OSBORNE

MOTION PASSED UNANIMOUSLY

Mr. Bowman: The Chair will now entertain a nomination for Vice Chairman.

MOTION BY DRESSEL, SECONDED BY McDOWELL TO NOMINATE  
RALPH BEGLEITER AS VICE CHAIRMAN OF THE PLANNING COMMISSION.

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,  
SHEEDY  
NAY: NONE  
ABSENT: OSBORNE

MOTION PASSED UNANIMOUSLY

**3. REVIEW AND CONSIDERATION OF AMENDMENTS TO THE ZONING CODE AND THE SUBDIVISION AND DEVELOPMENT REGULATIONS UPDATING NEWARK'S ENVIRONMENTAL AND AESTHETIC STANDARDS, INCLUDING WETLANDS AND RIPARIAN PROTECTIONS AND BUFFERS; STEEP SLOPE PROTECTIONS; LANDSCAPING AND MATURE TREE PROTECTION; AND ESTABLISHING A DOWNTOWN ABOVE GROUND UTILITY IMPACT FEE. [TABLED AUGUST 4, 2009]**

MOTION BY BEGLEITER, SECONDED BY DRESSEL TO REMOVE ITEM 3 FROM THE TABLE.

VOTE: 6-0  
AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL,  
SHEEDY  
NAY: NONE  
ABSENT: OSBORNE

MOTION PASSED UNANIMOUSLY

Mr. Lopata briefly reviewed his report to the Planning Commission which was placed in the minutes of the August 4, 2009 Planning Commission. The Commission then reviewed and voted on each item as follows:

**Downtown "Above Ground" Utility Impact Fee**

Mr. Begleiter: Mr. Chairman, would it make any sense to ask Electric Director Rick Vitelli if he wants to comment on the proposal?

Mr. Vitelli: Back in 1996-1997, I was asked to come up with a plan and pricing to put the lines on Main Street underground. I decided to get contractors in and get actual prices instead of an estimate where it could be a pie in the sky type of thing. Back then we actually did a full design and pricing and I think the cost was \$5 million. Ten years later in 2007, the City Manager at that time asked me to redo the prices and the price was a little over \$10 million for the same thing.

The reason for the high cost is that there are 26 locations with transformers that you have to have. You may be able to put some bigger ones and a few less transformers, but you still need to put them in to change from the high voltage to the low voltage. One of the problems you have is that there aren't too many places to put padmount transformers. Now when we put a commercial building in you need a place for the transformer. There are codes on how close to a building a transformer can be. I did find,

back ten years ago, I found more spaces than I found two years ago because the buildings that are being built are taking up more space and coming up closer to Main Street. We also found that not really any utility companies are putting transformers in pits because you have issues with water. You also have more than one circuit down Main Street. Other cities may have done this (Rehoboth, Elkton) but they have one circuit with a few transformers. One of the problems you have is that it is a lot easier to do it all at once than to do it piecemeal. When you do it piece mill when buildings are added or buildings change, you are going to be taking it out and redoing what you did. I also think it is a problem because on Main Street back in the early 1970s when the road and sidewalk was redone, the phone company came in and put duct banks in most of the sidewalk on both sides. If there is a duct bank there, you really can't put a transformer in the ground there. If you can't find a location for a transformer between buildings in a nook and cranny somewhere, it has to go in a vault. If you are going to do that in the road, which means every time you have to work on it, you have to shut a lane down and it is going to be a problem. We also found that we would have to put the low voltage wires between the buildings.

In any case, it is going to be really difficult and would take over two years to complete Main Street from Chapel Street to Elkton Road. It can be done. It is going to be costly and it is very difficult to do the design. The one thing I didn't do is -- I didn't look to feed it from the back. I didn't think people would give us easements to go on their property because if you give us an easement and I have an underground wire, you can't put a building on it because we don't want our power lines underneath a building if the conduit gets crushed. If that happens, we have no way to feed that person again. If it is part of a loop, it is part of a whole system down Main Street that could be a problem. So, we didn't look at that. We looked at putting them on Main Street. I don't think it will be done for awhile, but if you want to try to do sections of it, it can be done, but very difficult.

Mr. Begleiter: Mr. Vitelli did you ever investigate the possibility of some Federal or State grant for funding this project or a project like it?

Mr. Vitelli: No.

Mr. Begleiter: Did you ever look into relocated the wires above ground in the rear of the buildings?

Mr. Vitelli: No, because the buildings are too far from Delaware Avenue to run everything in the air. You can only run so far in the air with low voltage; then you would have high voltage lines crossing every property. If you go in the air, you have to go down Delaware Avenue with your main line and then you would have to tap off in a lot of places with a high voltage line on the property with a transformer.

Mr. Begleiter: I'm not sure I understand why you couldn't put the same poles that are in the front of the buildings in the back of the buildings.

Mr. Vitelli: The buildings are not close enough to Delaware Avenue. They are real close on Main Street. You can run across and hook them up. Some of those buildings are far off of Delaware Avenue.

Mr. Begleiter: And why do they have to be on Delaware Avenue?

Mr. Vitelli: That is the only place you can put power lines unless you get an easement to put it in the air on private property.

Mr. Begleiter: That is what I am asking about.

Mr. Vitelli: If I was a business owner, I wouldn't give you that easement because then you are locked in and you could never expand your building. The developers would not be able to do anything with the power lines running through their properties in the air. In the ground I wouldn't even want it, but it is a little easier to do in the ground, but you have to make sure the conduits don't get crushed.

Mr. Begleiter: To make sure I understand your earlier comment -- you have developers actually asking you to put the lines underground?

Mr. Vitelli: Yes, the first one was the diner on Main Street. That was because they couldn't build the building without us putting the line underground. The crane had to sit on Haines Street and come over that line.

Mr. Begleiter: Did you have a request like that from the developers on Elkton Road of the Eagle Diner property?

Mr. Vitelli: No, the only one that may have asked is Amstel Square. If he did, I gave him a price and the lines ended up going in the air because the price was too high.

Mr. Begleiter: Roy or Rick, either one may answer this question. On page 14, the Electric Department estimate of the cost of underground installation at \$2,900 per front footage. How did you come up with that?

Mr. Vitelli: That came from my total cost estimate from two years ago divided by how many feet Main Street is.

Mr. Begleiter: Does that cost estimate include the 20% profit the City makes off of its electric income.

Mr. Vitelli: No, that was just whatever the cost it was to build it.

Ms. Sheedy: You mentioned the expected cost has gone up over the past ten years. How stable do you think the current cost that we have is?

Mr. Vitelli: The cost you have now, the materials are probably a little bit less. I would say the labor would be less, too, if contractors are looking for work.

Ms. Sheedy: Would the cost be different if somebody handed the City a huge amount of money and the City decided to do it as one project?

Mr. Lopata: That is not a question for Rick; it is a policy question for the Council. You need to understand that this is not a piecemeal project although the ordinance is per foot, the implication is that we have to build up a sum of money to do a large piece of the project or all of it and if we have some outside assistance that helps pay the 75% we have to pay, that would be nice too. Remember, this assessment is only a quarter of the cost.

Ms. Sheedy: What you described with Jimmy's Diner where the owner paid to have the lines buried, because that is outside the project the cost would be expected to be greater. When a property owner or developer requests burying the lines -- is that assessed at this cost or do you go out and get a bid and you do it. Is that what they pay?

Mr. Vitelli: We did that ourselves. That was one circuit. We went underground and then came back up on the pole.

Ms. Sheedy: So, a site specific installation by request is just done at whatever it costs.

Mr. Vitelli: Yes.

Ms. Brown: What ways does the City have to encourage property owners along Main Street and Elkton Road to go along with the burying the lines and giving us the easement if we decide to do this?

Mr. Lopata: This wouldn't be encouragement. This would be a requirement. That is the point of this system. The whole point of this exercise is, if it is approved, it is not going to be voluntary any more. They may choose to save some of the money by absorbing some of the cost, perhaps, depending upon like an Elkton Road project where they might have a little more room. The assessment might be an incentive for them to do some of the work themselves.

Ms. Brown: Rick was talking about the fact that people would not want to give easements.

Mr. Lopata: That is the back of the property. The front is not an issue.

Ms. Brown: Would it be cheaper to have it in the back?

Mr. Lopata: If they put it on poles, yes, but there are these other issues. It is much cheaper to do it that way and maybe that will happen some day. An example is the Washington House. Remember, that was the little tiny Stone Balloon building. If there was a power line running parallel with Main Street behind there, there wouldn't be a Washington House. That is really the issue that Rick is raising.

I want to reemphasize the point of this exercise. This isn't to answer the question of how to do it. This is to fund it because we are talking about a multi-million dollar project. Right now the City has no money for it so, we need to begin to build up the fund. This will take quite a long time. There may be grant money. Maybe there will be some future stimulus money. There are other alternatives out there, but right now you are talking about \$11 million in 2007 to do the whole thing on Main Street.

Ms. Brown: This is basically saying that when we get ready to do it, everybody is going to be required to do it.

Mr. Lopata: This is saying we will have the money to do it. We then will be able to go ahead and do it. If we need the easements, we go out and acquire the easements if necessary. We probably will need some. Main Street rights-of-way as you saw in the Haines Street project are sometimes a little complicated.

Ms. Brown: My question was, is it actually feasible to do if we had a bucket of money?

Mr. Lopata: It is feasible to do it. If you have enough money, almost anything is feasible to do.

Mr. Vitelli: Also, when new projects come in, one of things I request is an open utility easement on every property. So, we do get that.

Ms. Dressel: I know less than zero about transformers and things like that, but you talked about high voltage and low voltage lines and you mentioned that, I think, in Rehoboth when they did all of their underline wires that they did not have that problem.

Mr. Vitelli: I have not been down there, but I assume they did not have as many transformers because that really makes it difficult.

Ms. Dressel: What I am trying to understand is, they did this for the length of Rehoboth Avenue, and they have an awful lot of stores and there are a lot of businesses, why do we have so many more transformers and high and low voltage lines than Rehoboth does? Is there something about our downtown district that requires that?

Mr. Vitelli: There is a lot of electrical load there. There is 3.5 megawatts, so we do have a lot of electric and you need transformers for that. There is a lot of them because you are limited on how big a transformer you can put on a pole before it starts pulling and falling over. No one ever really looks at them but you will see there are quite a few. And, you have to feed all the services. The way it happens over the years is this building gets done, this person wants his meters on this side, you run a wire here, and it just becomes a jungle.

Ms. Dressel: So, it sounds like it's because our Main Street was developed at different stages and the building types are different, and the businesses are different that we have a very different scenario.

Mr. Vitelli: I haven't been down to Rehoboth but, Elkton was one circuit and not as many transformers. I have been there to look at that. We have two circuits down Main Street and we have a lot of transformers. The road is ten inch reinforced concrete, so any time you dig into it the State makes you repair a large portion even if you are digging a trench this big, you have to spend a lot more to fix it.

Mr. Begleiter: No one ever looks at them. One of us looks at them at least. I'm sure you do. I'd like to suggest that you might want to take a trip to Middletown and Rehoboth, maybe even on company time; I think that would be worth doing. The issue of multiple circuits, is that something that is required or is it a legacy that we have to live with?

Mr. Vitelli: It is a legacy.

Mr. Begleiter: So, replacing a multiple circuit with a single circuit would be a cost saving or a cost increase? If we had all the money in the world and money was not an object, would it be less expensive or more expensive to put in a single circuit.

Mr. Vitelli: It depends on when you do it. The history is, originally the City was run at 4,000 volts, so they tied the substation. There is one at the Deer Park and there is one at the beginning of Main Street. So, there was a 4,000 volt circuit that ran through there. Subsequently, they built the 12,000 volt circuit. So, we are trying to put all the customers on the 12,000 volt circuit and slowly get rid of the 4,000 volt circuit. The problem is that until you completely get rid of the 4,000 volt circuit you still need that cable connecting those two 4,000 volt transformers.

Mr. Begleiter: How close are we? How many decades or generations are we away from doing that?

Mr. Vitelli: I have changed as much of the 4KV over to 12 as I can without now having to buy extensive substation transformers. We had 18 megawatts in 1998 and we are down to 9 megawatts. I have halved it in ten years. We are to the point where I can't just keep changing it over because I have to spend a million dollars to get a substation transformer. It will eventually happen.

Mr. Begleiter: When that happens, will you be able to eliminate any of the circuits?

Mr. Vitelli: Yes, we won't need the two circuits; you will just need the one.

Mr. Begleiter: You won't have the two circuits and that will mean that some of the transformers that are on that circuit can disappear.

Mr. Vitelli: No, you will still need the transformers but you won't need that second circuit.

Mr. Begleiter: So, you will have to put additional transformers on the existing poles on the 12K circuit.

Mr. Vitelli: They are already up.

Mr. Begleiter: You made mention of open utility easements that you are getting on new projects. Is that an underground easement?

Mr. Vitelli: It means I can do anything I want – aerial or underground.

Mr. Begleiter: Is that something that is happening on Main Street?

Mr. Vitelli: Yes.

Mr. Begleiter: Has it happened in all the projects we have reviewed in the last couple of years?

Mr. Lopata: Every one.

Mr. Begleiter: How many are you missing now?

Mr. Lopata: It is only the new stuff since the mid 1980s.

Mr. Begleiter: What is considered the new stuff? That means that there are actually utility easements available to the City, some of which are not being used along Main Street which would allow some movement of utilities elsewhere other than where they are now. That is already in place. So, the question of developers objecting to that or Washington House disappearing, presumably Washington House has the easement.

Mr. Vitelli: It has one but there is no place to put it.

Mr. Lopata: The building has covered the whole lot.

Mr. Begleiter: But if there is an easement, we can use it anytime we want whether the building is there or not?

Mr. Vitelli: You can't put it over the building.

Mr. Begleiter: Why not?

Mr. Vitelli: The building is four stories. There are no poles that go that high. You are not going to bore under it.

Mr. Begleiter: I don't think that is a given; at least in my mind that you can't bore under it. There are lots of cities in the world where you do bore under it. The developer's objection is out the window then. So, the Washington House example is not a good one.

Mr. Lopata: I think it is a fine example. Ralph, if I can help a little bit -- these are interesting questions. Are you getting at trying to lower the cost?

Mr. Begleiter: I am getting at trying to figure out ways to either lower the cost or to remove the cost that we already have of the poor quality development in downtown that results from having five, six and seven poles on a four corner intersection. If there is a way to do that and it doesn't require \$2,900 per front foot, then I think it is pertinent to this discussion because if the only option is to completely wipe everything out and put everything underground at \$2,900 per foot, then that is a big obstacle to jump over.

Mr. Lopata: What I was recommending was developing a fund large enough so that we could have it available for all the options. That is really the point here rather than to try to figure out the options ahead of time.

Mr. Begleiter: I think that is a good idea. But the numbers scare people. What I am trying to get at is when it comes to the political level, somebody is going to raise an objection to this. They are not going to raise an objection to the same kind of fee that is attached to putting in landscaping, but they are going to raise objections to a fee designed to improve the environment by fixing the utilities. So, I am trying to find out whether there are other ways of doing this by which the estimate that we end up having to reach can be reduced and it won't be as scary. That's all.

Mr. Vitelli: I would say, someone else could come up with a design that could do it, but this was mine. There are other consultants that might come up with other ideas or have other ways to do it.

Mr. Begleiter: We now know you didn't consider the idea of investigating a State or Federal grant, at least in the time you have been out. Maybe someone else in the City has done that. I don't know.

You have never investigated rear arials even though we now know there are easements available for at least some of those, where that might be possible. You earlier commented on the absence of padmount locations in the City, but we have parking lots

all over the place that have islands in them. I don't know whether transformers could be mounted on those pads. What is the decision making process here that went into the \$2,900 figure that leads us to have multiple poles in the same location, nearly adjacent poles with transformers and things on them? I got a little insight tonight when you said transformers are heavy so you put them on an old wooden pole and it is going to bend over. So, is there another option? Could we, at a much lower cost, install a metal pole capable of handling larger transformers and have fewer of them?

Mr. Vitelli: If you have a transformer that feeds three buildings and you get rid of it and put one here, you are going to have big heavy wires running from here to here to there to there.

Mr. Begleiter: As distinct from 5,000 tiny little wires. Look at Chapel Street.

Mr. Vitelli: Little wires are less obvious than the big ones.

Mr. Begleiter: So, the answer is those options have not been discussed. Consolidation of poles has not been discussed.

Mr. Lopata: Ralph, let me try again. This isn't Rick's idea. I want you to understand. This is my idea.

Mr. Begleiter: But the scary number is his. The scary number comes from Rick deciding that there is only one option.

Mr. Vitelli: That is because the previous city manager did not believe the previous director's price of \$1,500 a foot, so I did a full blown 30 page report and it was actually a little bit more than what he said back then.

Mr. Lopata: He was asked to investigate burying lines. The exercise was pretty straight forward.

Mr. Begleiter: So, maybe what we should do is ask the City Manager to ask that other options be investigated as well.

Mr. Lopata: You don't have to do that. I am sure Rick will be glad to do another option.

Mr. Vitelli: I would recommend hiring a consultant.

Ms. Sheedy: Roy, Item (d) "All new utility lines for new construction in undeveloped areas or parcels shall be installed underground, subject to the approval of the Electric Director." Does that mean all as in regardless where they are in the City?

Mr. Lopata: Correct.

Ms. Sheedy: Those properties, even if they were in the downtown development district, would not be assessed; they would simply pay for this as part of their construction cost.

Mr. Lopata: If it is possible to do it. Downtown is not undeveloped. This is to make sure it is clear.

Ms. Sheedy: I can't think of one undeveloped parcel in downtown.

Mr. Bowman: Is there anyone in the audience who wishes to address this issue, please come to the microphone and state your name and address.

Mr. Joe Charma: 711 Harvard Lane. First, regarding the \$2,900 fee, does that fee include replacing the transformer on the property for each individual location?

Mr. Vitelli: If you have a padmount on your property?



Mr. Charma: No, if you don't have a padmount. Does that include the padmount on the property?

Mr. Vitelli: That fee included everything. So that if there was not a transformer on the property and there was a transformer needed, it was included.

Mr. Charma: Looking at the example in the report. If that is imposed as an impact fee on individual properties downtown, that is a significant fee which will probably cause many property owners to not to choose to do anything with their property because if it is triggered when they file a building application, they will probably chose not to do anything. We have already seen that occur with the sprinkler ordinance. I am not saying it is a bad thing, but I am saying I think what we need to do is approach the fee in a different way. I have a suggestion. Rather than try to assess it on an individual property basis on the downtown properties, if you looked at the total revenue the Electric Department collects. They collect from, essentially, residential customers, industrial customers, and commercial customers. If you look at the number of kilowatt hours all those customers consume and you take that cost and you divide it by the number of kilowatt hours, the cost is very fractional. If you took \$15 million and you added to the total cost for all the customers and divided it by the total customers (everybody in the City) and you did it as a special assessment over a three year or five year period, you would be talking about a half cent for everyone in the City and you could fund this whole project. It wouldn't be a big deal. It is an added cost to everybody in the City.

I have to say that this is going to benefit everyone in the City. I don't live downtown but I enjoy downtown and I think the improvement is going to affect business downtown. It affects that whole downtown environment which is becoming quite nice. We have a lot of people coming to Newark as a destination. I think we could find another way to spread that cost out if you did a special assessment over three or five years, it is cents.

Mr. Lopata: Half a cent per kilowatt?

Mr. Charma: I will send you the computations, but it is amazing that if you distributed over all the consumers, it is not a lot. The question would be whether the populous of Newark would be willing to bear that cost.

Mrs. Jean White: 103 Radcliffe Drive. Burying the electric lines, will that include telecommunications – telephone and fiber optics such as Verizon lines? They are technically not electric lines.

Mr. Lopata: This is for every line that is on the poles.

Mrs. White: Is it possible to bury lines such as Verizon since customers come and go?

Mr. Lopata: Just like it is in the areas of the City where the lines are underground.

Mrs. White: I read about buried lines in New York City and how dogs and a person was hurt or electrocuted. Why would that happen?

Mr. Vitelli: When that happens, a live wire has touched the ground and the protection equipment isn't correct. The circuit breaker or fuse hasn't blown like it is supposed to. So, the installation was put in correctly. If you put it in correctly no one should get shocked or hurt.

Mr. Lopata: Jean, we have underground lines all over the City now.

Mrs. White: Why does this need to be coupled to the environmental regulations because it does seem to me that the impact fee for burying the lines is really a separate issue?

Mr. Lopata: When this gets to Council, it will be a separate ordinance. It is aesthetic in that sense.

Mrs. White: The Comprehensive Plan update was passed maybe a year ago and this could have moved forward and since then we had had developments up and down Main Street and Elkton Road which, if you do pass an impact fee, would escape it. It seems like a lost opportunity.

I wonder if a combination of Mr. Charma's suggestion and what is here could be done. I still like the idea of those properties directly affected in our downtown area to pay something and then maybe it could be spread in some manner which he is talking about.

Mr. Begleiter: I want to express appreciation to Roy because it was the Comprehensive Plan that we discussed a year ago that actually facilitated the possibility of considering this environmental improvement for the City of Newark, and I am grateful for his initiative in that last year. I am glad to have that now. This is very definitely an environmental issue. There isn't anything about ugly utility poles on Main Street or any other place in Newark that isn't environmental.

Joe, if I may ask you a question or two, please. When you completed one of your most recent projects such as 104 E. Main Street, how much did you spend on landscaping for that?

Mr. Charma: Approximately \$5,000.

Mr. Begleiter: That is a small project. Did you consider when you came before the Commission or Council to propose that saying to the Commission or Council that \$5,000 on landscaping is going to make me not think about building this project on Main Street? I'm not interested in building that building there and turning over \$5,000 in student rentals or whatever is going in there. Spending \$5,000 on landscaping is going to stop me.

Mr. Charma: It is probably equivalent to if you pick on 129 E. Main Street (that has been the example), \$35,000 is the cost for a 48 ft. wide lot. That is a pretty significant amount of money. You could buy a lot of windows or a lot of bricks for \$35,000.

Mr. Begleiter: Would it have prevented you from building that project?

Mr. Charma: I think that the economic times being what they are, if the occupancy wasn't approved at what the applicant needed to make his money work, the project was downright dead because he couldn't get his financing. The bank was not going to loan him money. The bank is looking at a certain return.

Mr. Begleiter: You're idea about spreading the cost over the City. Although you threw out the half cent, I'm guessing you wish you hadn't done that now, is there a more realistic number that you would want to throw out?

Mr. Charma: I will provide those numbers. I thought I had that with me.

Mr. Lopata: I want to remind the Commission and Joe that the City pays 75% of it. That money can come from all sorts of things including an assessment like that. This is sort of a blended system just like, I think, you said. Maybe there is a cheaper way to do it which is what Ralph getting at. But, regardless, the 75% is going to come from the community.

Mr. Charma: You can probably take the idea of distributing the cost and apply the percent distribution and see how that works out. Maybe the impact fee for a business wouldn't be that much. Then you get into the whole idea of who is the consumer. The businesses are the consumers.

Mr. Lopata: The changes we've done in our budgeting, the electric fund stays on its own, so it is more than likely that that 75% would come from that fund which would come from the rate payers which would include the University.

Mr. Begleiter: We are assuming that the 75% calculation that you included in this proposed BEAUTI fee, that 75% would come from all the rate payers, which you said would include the University, but if the incremental amount amounts to a cent or two, would it be reasonable for the City Council to consider taking that two cents out of the 20% electric profit? I understand that it would have to come from something else because we are now spending that 20% profit on other things that we spend that on. It is a hidden tax for the residents of Newark which they are apparently grateful to pay. My question is, wouldn't this be as valid a purpose for that tax money to be spent on as anything else. And wouldn't that be up to the City Council to decide?

Mr. Lopata: That is a policy question.

Mr. Begleiter: That would be a City Council decision, right?

Mr. Lopata: Absolutely. This is going to get to Council one way or the other. They will have a chance to jiggle around with this – approve it, change it . . . .

Mr. Begleiter: My reason for asking it is not to ask you guys to make the policy but would the two cents break the back of the 20% profit from the Electric Department?

Mr. Lopata: This is not a good year to ask that.

Mr. Begleiter: This is not a good year to ask any of these questions, we are also not doing this, this year. Everyone understands we don't have the money. Joe just talked about in bad economic times a developer is not going to do it. We understand that, but there are also good economic times and we have just been through some. It is not going to be done tomorrow. We are planning for the future. My basic point is that if the amount is spread over all the rate payers, is the additional 25% going to make a very small difference in how much the City's overall funds we could expect on this?

Mr. Lopata: If you are saying, could we do it the way Joe is suggesting and do a 100% that way? Sure, that is up to Council.

Mr. Begleiter: That is what I was getting at. I'm not sure I see the value of including in the proposal at this time, the split. It strikes me that that is a policy question. How much of the City's money does the City want to spend on this project and how much of the developer of the particular property in front of whom the pole is located should be spending? I might suggest that there is no particular reason to include that split in the proposal.

Mr. Lopata: I don't disagree with that. There is nothing magical about it. My first shot was 50/50, as you remember.

Mr. Begleiter: I understand there isn't anything magical about it, but there is something kind of negatively magical about it in the sense that at our level where we are not making any decisions anyway, it raises the hackles of somebody saying, why is it 25 and why is it not 30 and so on. The point that we are trying to get at is let's start building a fund with which we can accomplish this important environmental goal for the City. How we divide the cost of that fund is something the City Council will probably have some extensive debates on and might require some additional information such as grants, consolidation of poles and wires and utilization of existing easements in the rear of properties.

Ms. Sheedy: Do we have a comparison, if you will, of what the costs of constructing a commercial building in downtown Newark is in comparison with Elkton and Middletown. Are we competitive with those towns?

Mr. Lopata: I can't answer the question directly. I can answer it indirectly. People are building in Newark in the worst economic times since the Great Depression and much more so than anywhere else in this region. So, we must be a decent market. Competitively speaking we are okay. I will say, however, on the other, other hand, and this gets to some of the discussion we have just had – the parking waiver fee, we were

told recently that one of the businesses (Chipotle Grill) is not going to come to Newark. They don't want to pay the parking waiver fee.

In any case, there is no doubt that every time you add a cost to a developer's menu they have to consider when they have to get financing that could impact things going forward. This is an additional cost. That gets to the issue of Ralph touched on and you all touched on to a certain extent as we have discussed this idea over the years, what is the value of doing this. I can't put a number on that. You certainly notice when you go to downtowns that don't have lines. Is that economic incentive to make people develop in a community? I don't know, but does that make people happier in their community? Certainly the "Ralphs" of each community are happier.

Mr. Bowman: I can't help but think that one way or the other the citizens of Newark are going to bear the cost whether it is through an additional rate increase on power, whether it is taxes, whether it's a person who develops a piece of property and has to pay the impact fee, is going to pass that cost along somewhere.

Mr. Begleiter: Or whether it is the opportunity cost of losing development and losing environment by virtue of having the continued poor appearance of Main Street. That is a cost, too.

Mr. Bowman: It certainly is, but I think, at least again, in this time and maybe for some time to come, if we were to put this issue on a list of concerns, and ask to have them ranked by the citizens of this community, I don't think burying electric lines would show up real high on my immediate concern list or most of the citizens of this community's list.

I think Joe touched on something. Maybe this is an item for the Council to look at and possibly put on as a referendum. Would people support as they did with the reservoir some way of funding this and looking to the future to make this happen to make the community look better? We were faced with a situation where we were having problems in droughts with water shortages and people stepped up and voted for a pretty high priced bond bill. Maybe we ought to put it through the citizenry, but I don't think this ranks real high on the concerns list now in most people's minds in this community. I obviously don't speak for everybody.

Mr. Begleiter: Mr. Chairman, I would like to respond to that. If you use that measure, which I would strongly urge you not to use, of value for the kinds of work this Commission does, I venture to guess that a tiny, tiny fraction of the decisions that the Planning Commission makes, if any, would rise to the level of what you are calling important in this issue. I assure you that most citizens in this town could care less about the landscaping on the side of the buildings and so on. We have people who come here and testify for that kind of issue, but if that is the standard we are going to use, that is not what City leadership is about. City leadership is about leading the City in the right direction in a number of ways and we do that every time we meet.

Mr. Bowman: That is true, Ralph, but you still have to consider the fact that there are some 25,000 other souls in this community as well.

Mr. Begleiter: Who are not concerned about these issues . . .

Mr. Bowman: I am expressing an opinion. So, whatever we do, I think, always has to consider the big picture. I think that is something I have to keep in mind. I don't know whether everybody else sitting here does or not.

Ms. Dressel: I would like to answer to that as well because I was just on Main Street with a group of friends, some of them from out-of-town, and every single person commented about the lines. So, I do believe that it is an aesthetic concern; it's an accessibility concern because of the poles in the middle of the sidewalks. I haven't experienced it recently on Main Street, but I know in Bethany every time I walk past a transformer all you can hear is the buzz, and it is very distracting. I have more safety concerns about the wires hanging up in the air than I do about the ones that are

underground. If you look at what keeps happening on Paper Mill Road, cars are running into telephone poles and knocking down wires. We still have one that hasn't been repaired. So, I have a lot more concerns about the up-in-the- air wires than I do with the ones below. I would like to see that, and I would like to see that we progress with this with a recommendation to City Council.

Mr. Bowman: That is okay. I understand where you are coming from. I think we all have different opinions. I think one thing that we need not to undersell is the tremendous amount of engineering that is involved in this kind of stuff, and you cannot, as our Electric Director said, do this kind of thing piecemeal because of the limitations of what you can do with splicing, cabling and that sort of thing. Running electricity is like running water. You run the pipe far enough and long enough, pretty soon water does not come out the other end because you lose friction in the pipes the same way you do with electricity. So, you just can't run wires willy nilly everywhere and expect everything to come out right.

Ms. Dressel: And I will hope that once this process is underway, we can find a way to consolidate probably half of the wires that are out there. It seems to me if we do it all at once the number of wires and the number of transformers and things that are there should be able to be condensed.

Mr. Bowman: Who knows, wireless electricity may be coming next. It is here now. It is called lightening.

Mr. Charma: We have some brilliant economic minds at the University of Delaware. Some of the things we are talking about seem intangible about what is the cost benefit of improved aesthetics. Perhaps there is a graduate student who wants to do his doctorate on that and do this analysis. Maybe we can work with the Institute of Public Policy.

Mr. Bowman: Just don't ask the City for money.

Mr. Charma: I am suggesting that somebody, perhaps, there maybe are already doing research on this or have done research on this. A cost benefit analysis would be really helpful.

MOTION BY BEGLEITER, SECONDED BY DRESSSEL THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND THE SUBDISVION AND DEVELOPMENT REGULATIONS AS FOLLOWS:

AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS, APPENDIX VII, ELECTRICITY SERVICE, 1(c) WHICH READS AS FOLLOWS:

“(c) EXTENSIONS TO INDUSTRIAL AND COMMERCIAL CUSTOMERS WILL BE EXAMINED INDIVIDUALLY TO DETERMINE THE APPLICANT’S PARTICIPATION IN FINANCING, IF ANY.”

AND REPLACE IT WITH THE FOLLOWING SUBSECTIONS:

“(c) EXTENSIONS TO INDUSTRIAL AND COMMERCIAL CUSTOMERS WILL BE EXAMINED INDIVIDUALLY TO DETERMINE THE APPLICANT’S PARTICIPATION IN FINANCING. IN ADDITION, FOR SUBDIVISION PLANS OF ALL TYPES CALLING FOR CONSTRUCTION ON PROPERTIES FRONTING ON STREETS WITHIN THE DOWNTOWN NEWARK DEVELOPMENT DISTRICT, AS DESCRIBED IN COMPREHENSIVE DEVELOPMENT PLAN IV, AND AS MAY BE FURTHER MODIFIED FROM TIME TO TIME BY CITY COUNCIL, A FEE, TO BE KNOWN AS “BEAUTI” OR BEAUTIFICATION ENHANCEMENT AND UTILITY TRANSFORMATION INITIATIVE, SHALL BE ASSESSED, SUBJECT TO THE FOLLOWING:

(1) AN ASSESSMENT OF \$725 PER FOOT [NOTE: WHILE THE COMMISSION DID NOT ALTER THIS FIGURE PROPOSED IN THE

*PLANNING REPORT, THE INTENT OF THE MOTION AND DISCUSSION APPARENTLY WAS FOR COUNCIL TO ULTIMATELY DETERMINE THE COST OF THE ASSESSMENT]* BASED ON THE NUMBER OF FEET ALONG THE STREET LINE. IN THE CASE OF SUBDIVISIONS SITUATED AT THE CORNER OF TWO STREETS OR OTHERWISE SO SITUATED AS TO BE ASSESSED ON ONE OF SUCH STREETS, ONLY ONE “FRONT” OF THE PROPERTY AND THAT PORTION OF A DESIGNATED SIDE FRONTAGE IN EXCESS OF 125 FEET, SHALL BE ASSESSABLE FOR THIS FEE.

(2) THESE ASSESSMENTS SHALL BE DEPOSITED IN A FUND ESTABLISHED AND DISTRIBUTED AT THE SOLE DISCRETION OF THE CITY FOR UTILITY LINE UNDERGROUND INSTALLATION OR RELOCATION, WITH THE INTENT OF REMOVING UTILITY LINES AND POLES FROM DOWNTOWN STREET FRONTAGES. FUNDS MAY BE COMBINED WITH OTHER AVAILABLE FINANCIAL RESOURCES AND/OR ADDITIONAL DEVELOPER CONTRIBUTIONS.

(3) THE ASSESSMENT ESTABLISHED HEREIN MAY BE REVISED FROM TIME TO TIME, BASED ON THE RECOMMENDATION OF THE ELECTRIC DIRECTOR, TO REFLECT REVISED ESTIMATES OF THE COST TO INSTALL AERIAL MAIN STREET UTILITY LINES UNDERGROUND.

(d) ALL NEW UTILITY LINES FOR NEW CONSTRUCTION IN UNDEVELOPED AREAS OR PARCELS SHALL BE INSTALLED UNDERGROUND, SUBJECT TO THE APPROVAL OF THE ELECTRIC DIRECTOR.”

VOTE: 5-1

AYE: BEGLEITER, BROWN, DRESSEL, McDOWELL, SHEEDY

NAY: BOWMAN

ABSENT: OSBORNE

MOTION PASSED

### **Wetlands**

Mr. Lopata: What this ordinance does is it significantly expands our wetlands requirements. We delete our current regulations, which are shown at the bottom of page 4 and top of page 5 and replace them with a more up-to-date and modernized set of site design and construction and buffer requirements for wetlands that comes from the work we did with the White Clay Creek Wild and Scenic River folks, who are here this evening, and also our research into current standards reviewed with our Public Works Department. I also included, as you requested, the wetlands map which is up on the bulletin board for folks in the audience. There are not a lot of wetlands in the City of Newark but there are certainly some in the surrounding area all of which would be impacted if we were to annex or develop these sites.

Ms. Peggy Brown: How much of this is the University of Delaware? For instance, I am looking at College Avenue, Paper Mill Road, are they subject to our Wetland regulations?

Mr. Lopata: They are subject to some of the State regulations but not ours.

Ms. Dressel: The reservoir is not on here, is it?

Mr. Lopata: They are not showing that.

Ms. Dressel: The largest body of water is not on the map.

Mr. Bowman: It is manmade.

Mr. Lopata: Maybe that is why. They have a few on Barksdale Road – the little pond that is out by the Maryland State line – that is actually manmade. . The reservoir is a City park so for all intents and purposes it is not relevant. These regulations are for private owned property. Many of these wetlands are in the large wet area just past Suburban Plaza. If you look off Elkton Road to the northwest, you see one of the larger areas. That is in the DuPont land that we just acquired and was annexed to the City about six months ago. There are two ponds at our water treatment plant that are shown here. The most significant impacted possibility, I think, is the golf course. It is going to be close to two years in February that that project was approved. If another three years go by and nothing happens out there, that subdivision it becomes, in effect, null and void and they may have to start all over again.

Most of these other areas, quite frankly, are either in City parks or areas that are not likely to be developed or in the floodplain. This is important language for the areas that I have indicated, but I don't want to oversell this and say it is going to do something that it is not going to do.

Mr. Bowman: We will open this topic to the public.

Ms. Linda Stapleford: 802 Dallam Road. I am with the White Clay Wild and Scenic Program and part of our goals is to protect the water resources so we have interest in these various ordinance changes.

In terms of wetlands, as you pointed out, there aren't a whole lot that are shown on the map. I do have some information on wetlands in general, just to emphasize the point, even though there might be small amounts of wetlands, they do serve important purposes. A recent study in New Jersey put the value of fresh water wetlands at \$9.4 billion per year in ecosystem services. What that means is terms of flood conveyance that it provides flood storage, erosion control, pollution prevention and control, habitat for water fowl and other wildlife, open space and aesthetic values. In addition, I just want to point out that Delaware has lost probably over half of its wetlands that were here in the 1780s. The risk right now is to non-tidal isolated wetlands which are basically what you see on this map. They don't have any other protection. There was some protection within the Clean Water Act, but there is some litigation that has been going on that may remove those wetlands from that protection. So, they are very vulnerable. The City provides the only level of protection.

Mr. Lopata: We are the keeper of them.

Ms. Stapleford: That is exactly right. I did have a question, though. In terms of the map, does that mean that the ordinance would only be relevant to the ones that are on the map?

Mr. Lopata: We asked the Water Resources Agency to give us a handy little map for illustrative purposes. But, whatever qualifies as a wetland is in the ordinance.

Ms. Stapleford: I noticed that some of them were missing, I was pretty sure of that on the University property.

Mr. Lopata: The reservoir is a good example of that.

Ms. Stapleford: The person pointed out that the map probably captures anything that has been developed. Undeveloped lands may have other wetlands.

Mr. Lopata: This is just by way of guidance.

Ms. Stapleford: That would be particularly relevant in terms of annexation.

Mr. John Gaadt: I am an Environmental Land Use Planning Consultant working with the White Clay Creek Management Committee. I addressed this to you at your July meeting to talk a little bit about the value of some of these environmental resources. I don't have

a lot to add to what Linda said about this particular issue. I do want to emphasize the fact that wetlands perform a very important function in the handout that Linda gave to you tonight. The State of Delaware has lost the majority of its wetlands, so the idea of protecting what we have left and the fact that you are the keepers of the wetlands you have remaining in the City of Newark places an obligation, I believe, on the City to do something to protect these wetlands for the function they provide.

Again, we worked with the Planning and Development Department on this language and we are very happy with the language that is before you this evening.

Mr. Lopata: Mr. Chairman, if I could add, I noted at a previous meeting and it is in the report. I do want to publicly thank John and Linda. We spent a lot of time on this and they took the time to give me a considerable resource material that not only contributed to this one, but all the other items, other than the electric, that is before you this evening. So, that was a very big help and gave us a lot of guidance. For that, I am very grateful to both of you.

Mr. Gaadt: I would like to make another point. I suppose it could be argued that because we don't have a lot of wetlands in the City, why go to the effort of enacting new standards to protect what we have. I guess I see it from another point of view. You don't have that much, but why not protect what you have left. I think there is value in saying that we have a resource that performs an important function for the City. We don't have a lot of it, but we should protect it. In the instances where the City will seek redevelopment in the years to come, there could be some wetlands that aren't currently affected by this type of legislation today, but they could be affected in the future.

Mr. Chris Locke: 604 Cambridge Drive. I am a little confused by what I am hearing. Wetlands are protected right now by both Federal and State law. What this amendment would do would be to protect the 50 feet of land that borders wetlands, which is not wetlands. Is that right, Roy?

Mr. Lopata: This expands it to include a buffer area around the wetlands.

Mr. Locke: So, the wetlands are protected by both Federal and State law at this point. This would be protecting the buffer area.

Mr. Lopata: This also clarifies the existing status, Item 1 and several others, on page 5 in terms of alterations of existing wetlands. What it also adds is a standard that is becoming more and more common. In fact, the borders on wetlands and riparian buffers, but wetlands in particular, range from 15 feet to 500 feet. If you look at ordinances across the country, 25 to 50 feet is very common. 50 feet is what is being used in our stream valley. I think this is a reasonable buffer area to ensure the protection of the wetlands. That is really the science behind this. It is not simply the wetlands themselves, it is to go beyond that to make sure the wetlands are preserved.

Mr. Locke: I just think it is important to state that the wetlands are protected right now by both Federal and State law.

Mr. Lopata: There might be some argument about the nature of that protection, but there are existing protections.

Mr. Locke: For developments like Wilson Farm and Village of Twin Lakes that have a substantial amount of wetlands – Wilson Farms has 28 acres of wetlands – how would this change to the Code affect that sort of development as well as Village of Twin Lakes?

Mr. Lopata: Twin Lakes is underway. With Saw Mill Place, the same thing applies, as I said, to the Country Club. If five years goes by and nothing happens, yes, this could have some impact. I don't think much because if you are in a wet area, you shouldn't be. And I don't think the wetlands are within 50 feet of the construction on that project. If they are, there will have to be some changes.

Mr. Locke: And, this would not apply to the University of Delaware property?



Mr. Lopata: Only the State regulations apply. The University is exempt.

Ms. Stapleford: On the last page of the handout I gave you – this is from the DNREC website. I will read some relevant points that this gentleman just said -- “Even with numerous Federal and State level protection efforts, many non-tidal; that is, headwater tributaries and isolated wetlands are threatened because of gaps in existing regulations. Legally, wetlands are permitted to be impacted on a small scale with blanket approvals with no reporting or mitigation requirements. Some with small scale impacts can be detrimental to ecosystems as a whole. In addition, some previously converted wetlands do not fall under regulatory control or lack incentive progress. Recent court challenges question the extent of waters covered by the Clean Water Act. Wetlands and water ways are currently under the U.S. Army Corps of Engineer jurisdiction. This ambiguity has resulted in a period of vulnerability for some wetlands. In Delaware it has been estimated that approximately 30,000 acres of non-tidal fresh water wetlands – which these fall into that category – may be considered isolated meaning these wetlands are unregulated and threatened to be lost.”

So, this is about 20% of the non-tidal freshwater wetland extent throughout the State and is in line with the estimated 20% nationally considered isolated. Some of them are not protected.

Mr. Charma: Previously developed parcel; can you better define that?

Mr. Lopata: As any change in the Subdivision Regulations, Joe, it only covers only new development. There is one clause here that has to do deal with the buffer areas, so it is an already developed site. The wetland and the buffer won't have a conflict.

Mr. Charma: What about unbuilt recorded land.

Mr. Lopata: That is the five year timeframe I was talking about before. That will be impacted once the time limit is up.

Mr. Charma: I would recommend that manmade ponds be excluded from this ordinance.

Mr. Lopata: They have become qualified as wetlands.

Mr. Charma: They are waters of the United States. That is a different classification than a wetland. There are different classifications. That is a different classification. That means that if you do this, you can't maintain a stormwater pond. You can't go in and dredge it. The Corps went through all these issues. The Corps excludes manmade ponds.

Mr. Lopata: I think item #3 covers that on page 5.

Mr. Charma: It doesn't specifically say.

Mr. Lopata: It says stormwater management facilities are permitted.

Mr. Charma: There may be a farm pond.

Mr. Lopata: We can add that if you want to put it there.

Mr. Charma: A manmade water feature should be excluded. I do agree with everything Ms. Stapleford and Mr. Gaadt say with respect to maintaining the environment, but I would think that if the Corps saw that the need for a buffer was appropriate they would have put that in the law when they drafted the clean water act. If you are going to buffer anything, I think that a buffer more on the order of 10 to 25 feet keeps you from building right up to it. I would agree that if you build right up to it, you are going to get right in it. Something is going to happen. I think the buffer should be reduced if you apply anything.

Mr. Lopata: Our federal system of government implies that state and local governments can have different and varying relations.

Mr. Charma: That is something the Corps is changing. The Corps has redone their entire way of classifying wetlands. New Castle County, for example, isolated wetlands have become a problem there because there are small pockets of wetlands that are less than 20,000 square feet that kind of fall out of their regulations. They are currently doing exactly what you did. They said you need to protect them. When you go to Corps and get a jurisdictional determination and the Corps says we don't care, they are not a valuable habitat, they are not valuable wetlands by the Corps' definition and the EPA standards. You are going to get into the same kind of thing the County is right now changing. If you are going to do it, you should investigate it a little more and be careful about where you are protecting. Again, I am all for environmental enhancements and protecting the environment. I do it for a living.

Mrs. Dorothy Miller: 430 Orchard Road. I'd like to argue against what Joe said. I agree with Linda and John. I am representing the Coalition for Natural Stream Valleys, by the way. If anything, we should make them 100 foot buffers.

The other thing is this use of the word minimal. It is a word that has no specific meaning.

Mr. Lopata: It is a term of art that is used throughout the literature.

Ms. Miller: It is a weasel word.

Mr. Lopata: All the weasels all over the country are using it so I am just joining them.

Ms. Miller: Who decides if something is minimal or not.

Mr. Lopata: It is a matter of interpretation.

Ms. Miller: Who is the person who decides that?

Mr. Lopata: The Public Works Director.

Ms. Miller: So, it doesn't go through the Council.

Mr. Lopata: They will ultimately see the plan. The Public Works decides that in terms of the staff review of the plan. The Council can modify it.

Ms. Miller: On the next item that you are going to – the riparian buffer – just for the record, that should be 100 feet.

Mrs. Jean White: 103 Radcliffe Drive. I would like a wetlands report by a perspective developer to be completed before the Planning Commission. There are numerous instances that I could cite which the wetlands report was not yet available. I am not necessarily saying that the whole report should be given to you, but a summary should be complete so anybody who wants to look at it can look at it including members of the public like myself. And, secondly, a summary of the wetlands report be given to you on the Commission in your packet.

Page #5, item 3, the last paragraph, I was concerned about that because that really does change the ecology of a wetlands area to put a stormwater management facility within a wetlands.

Mr. Lopata: As per DNREC regulations and it is only if the wetlands are maintained or enhanced.

Mrs. White: I am also for keeping the 50 foot buffer outside of the wetlands. Loss of habitat is one of the greatest causes of loss of diversity of species. Even though we may not have too many wetlands in the City, I think that 50 foot buffer is very important and can be argued that it can be much more.

Mr. Bowman: I am going to bring it back to the table for any other comments from the Commissioners.

Ms. Brown: I have a question about manmade ponds.

Mr. Lopata: That is something that Mr. Charma has suggested as an amendment.

Ms. Brown: Not to exclude it, but this doesn't include it.

Mr. Lopata: I think for stormwater management facilities, the way it is worded now, I think it is adequate. This is typical language. I don't have a problem necessarily with adding the words if that somehow gives people some sense of comfort on the Planning Commission.

Ms. Brown: As long as we feel that it is inclusive.

Mr. Lopata: A stormwater management facility is not made by God. It is made by man.

Ms. Brown: My feeling is that once you have some kind water feature somewhere, it becomes a habitat.

MOTION BY DRESSEL, SECONDED BY SHEEDY THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND THE SUBDISVION AND DEVELOPMENT REGULATIONS AS FOLLOWS:

1. DELETE SUBDIVISION AND DEVELOPMENT REGULATIONS APPENDIX III, SECTION VIII (c), WHICH READS AS FOLLOWS:

“(c) *STANDARDS FOR REVIEW OF WETLANDS REPORTS.* IN REVIEWING WETLANDS REPORTS THE PUBLIC WORKS DIRECTOR SHALL CONSIDER THE FOLLOWING:

- (1) WHETHER THE SUBDIVISION PLAN IS SENSITIVE TO THE WETLANDS IDENTIFIED ON THE SITE SENSITIVITY TO WETLANDS SHALL MEAN THAT THE SUBDIVISION PLAN WILL RESULT IN MINIMAL FEASIBLE ALTERATION OR IMPAIRMENT TO THE WETLANDS CHARACTERISTICS AND ITS EXISTING CONTOURS, VEGETATION, HYDROLOGIC CONDITIONS, AND WILL NOT CAUSE SIGNIFICANT DEGRADATION OF GROUND AND SURFACE WATER QUALITY.
- (2) WHETHER A SUBDIVISION PLAN THAT DOES NOT REQUIRE THE DISTURBANCE OF WETLANDS ON THE SITE CAN BE REALISTICALLY IMPLEMENTED.
- (3) WHETHER REASONABLE DESIGN ALTERNATIVES EXIST TO MINIMIZE THE DISTURBANCE OF WETLANDS ON THE SITE.
- (4) WHETHER WETLANDS DISTURBANCE DEPICTED ON THE SUBDIVISION PLAN ACCURATELY REFLECTS THOSE ACTIVITIES NECESSARY TO DEVELOP THE SITE AS PROPOSED.
- (5) THE QUALITY OF THE WETLANDS THAT MAY BE AFFECTED AND THE AMOUNT OF WETLANDS TO BE DISTURBED.
- (6) WHETHER THE SUBDIVISION PLAN COMPLIES WITH ALL OTHER APPLICABLE FLOODPLAIN, WATER RESOURCE PROTECTION AREA, WET AREAS, AND RELATED REQUIREMENTS OF THIS CODE.”

AND REPLACE IT WITH THE FOLLOWING:

“(c) *STANDARDS FOR WETLANDS DESIGN.* BECAUSE THE PRESERVATION OF NEWARK’S WETLANDS IN AN UNDISTURBED NATURAL CONDITION CONSTITUTES IMPORTANT PHYSICAL, AESTHETIC, RECREATIONAL, WATER QUALITY, HEALTH, AND ECONOMIC ASSETS FOR OUR COMMUNITY, SUBDIVISION PLANS WITH DELINEATED WETLANDS [SEE ATTACHED WETLANDS MAP] SHALL BE SUBJECT TO THE FOLLOWING SITE DESIGN AND CONSTRUCTION REQUIREMENTS AND REVIEW CRITERIA:

*SITE DESIGN AND CONSTRUCTION REQUIREMENTS*

- (1) THERE SHALL BE MINIMAL FEASIBLE ALTERATION OR IMPAIRMENT TO THE WETLANDS’ CHARACTERISTICS AND ITS EXISTING CONTOURS, AND TO ITS VEGETATION AND HYDROLOGIC CONDITIONS; ANY SUCH ALTERNATION SHALL NOT CAUSE SIGNIFICANT DEGRADATION OF GROUND AND SURFACE WATER QUALITY AND QUANTITY.
- (2) FOR UNDEVELOPED LANDS, A FIFTY FOOT WIDE BUFFER AREA SURROUNDING THE WETLANDS MEASURED FROM THE EDGE OF THE WETLANDS JURISDICTIONAL LINE SHALL BE REQUIRED. THIS BUFFER AREA SHALL CONSIST OF NATURAL AND MINIMALLY DISTURBED VEGETATION, WITH ANY SUCH DISTURBANCE SUBJECT TO THE STANDARDS IN SUBSECTION (1) ABOVE. A FIVE FOOT WIDE PATHWAY MOWED TO A MINIMUM HEIGHT OF FOUR INCHES THROUGH THE BUFFER FOR PEDESTRIAN ACCESS TO THE WETLAND(S) MAY BE PERMITTED. FOR WETLANDS LOCATED ON PREVIOUSLY DEVELOPED PARCELS, THE BUFFER AREA SHALL CONSIST OF THE AREA BETWEEN THE SITE’S IMPERVIOUS SURFACE AND THE WETLANDS JURISDICTIONAL LINE.
- (3) STORMWATER MANAGEMENT FACILITIES ARE PERMITTED, AS PER DNREC’S DELAWARE SEDIMENT AND STORMWATER REGULATIONS, IF WETLANDS ARE MAINTAINED OR ENHANCED, AND IF THE DISTURBANCE FOR STORMWATER MANAGEMENT IS THE ONLY FEASIBLE ALTERNATIVE, SUBJECT TO ALL STATE AND FEDERAL PERMITS AND WETLANDS MITIGATION REQUIREMENTS.

*REVIEW CRITERIA*

- (1) WHETHER REASONABLE DESIGN ALTERNATIVES EXIST TO MINIMIZE THE DISTURBANCE OF WETLANDS ON THE SITE, INCLUDING SITE DESIGN TO INCORPORATE WETLANDS WITHIN PROPOSED PUBLIC OR PRIVATE OPEN SPACE.
- (2) WHETHER WETLANDS DISTURBANCE DEPICTED ON THE SUBDIVISION PLAN ACCURATELY REFLECTS THOSE ACTIVITIES NECESSARY TO DEVELOP THE SITE AS PROPOSED.
- (3) THE QUALITY OF THE WETLANDS THAT MAY BE IMPACTED AND THE AMOUNT OF WETLANDS TO BE DISTURBED.
- (4) WHETHER THE SUBDIVISION PLAN COMPLIES WITH ALL OTHER APPLICABLE FLOODPLAIN, WATER RESOURCE PROTECTION AREA, WET AREAS, AND RELATED REQUIREMENTS OF THIS CODE.”

2. DELETE SUBDIVISION AND DEVELOPMENT REGULATIONS APPENDIX III, SECTION VIII(d), WHICH READS AS FOLLOWS:

“(d) *DESIGN ALTERNATIVES*. THE PUBLIC WORKS DIRECTOR MAY APPROVE MODIFICATIONS TO THE SUBDIVISION PLAN SITE DESIGN THAT SERVE TO PRESERVE WETLAND AREAS OR MINIMIZE THE DISTURBANCE OF WETLANDS.”

AND REPLACE IT WITH THE FOLLOWING:

“(d) *DESIGN ALTERNATIVES*. THE PUBLIC WORKS DIRECTOR MAY APPROVE MODIFICATIONS TO THE SUBDIVISION PLAN SITE DESIGN THAT SERVE TO PRESERVE WETLAND AREAS OR MINIMIZE THE DISTURBANCE OF WETLANDS. AS SPECIFIED IN THE DELAWARE SEDIMENT AND STORMWATER REGULATIONS, WETLAND DISTURBANCE FOR STORMWATER MANAGEMENT SHALL BE LIMITED TO THE CONSTRUCTION OF POND EMBANKMENTS, PROVIDED THAT THE INTENDED OR FUNCTIONAL ASPECTS OF THE STORMWATER FACILITY AND WETLANDS ARE MAINTAINED OR ENHANCED AND THE CONSTRUCTION IN THE WETLANDS FOR THIS PURPOSE IS THE ONLY REASONABLE ALTERNATIVE. ALL NECESSARY STATE AND FEDERAL PERMITS MUST BE OBTAINED AND MITIGATION MEASURES SATISFIED.”

3. AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS, APPENDIX III, SECTION VIII (a)(2) BY ADDING A NEW SUBSECTION “c.” TO EXISTING CRITERIA FOR PUBLIC WORKS DEPARTMENT WAIVERS FOR WETLANDS REPORTS, TO READ AS FOLLOWS:

“c. NEW OR ADDITIONAL CONSTRUCTION IS PROPOSED IN DEVELOPED AREAS WHERE IN THE DETERMINATION OF THE PUBLIC WORKS DIRECTOR NO WETLANDS IMPACT WILL OCCUR.”

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, SHEEDY

NAY: NONE

ABSENT: OSBORNE

MOTION PASSED

### **Riparian Buffers**

Mr. John Gaadt: With regards to the riparian buffer amendments, I did have one recommended change to the language. On page 8, I believe there is a typo under #7, the fifth line down, “. . . may be waived only in instances where the existing stand of trees and is sufficiently wide . . .” Take out the second word “and.”

I would like to leave two things with you this evening regarding riparian buffers – excerpts from two documents. I had mentioned at the July meeting that in terms of the value of protecting riparian buffers, it might be a good idea to look at the White Clay Creek Watershed Management Plan for some guidance on that. I brought an excerpt from that plan tonight which I will leave with you. It outlines objective C in the plan which talks about protecting and improving water quality and stream habitat through riparian forest buffers. It explains what they are and why it is important to protect riparian buffer areas. That is in this document, you may have seen it. It is the actual plan for the White Clay Creek watershed. The other excerpt I would like to leave with you this evening if I could is from a plan that was done in Chester County, Pennsylvania, but it also deals with the White Clay Creek on the Pennsylvania side. That was another issue I talked about in July. There are two excerpts from that plan, which I will leave with you. The one talks about the value of protecting riparian buffer areas and the functions they serve. The other one refers to buffer widths and how different widths address the protection of the functions in a riparian area. I had mentioned at the July meeting that that buffer width could range from 0 or 25 feet all the way up to 350 feet depending on

what the protection is you are seeking within that riparian area. This plan lays out the widths based on the research that has been done throughout this country on those widths. And, it points out pretty clearly that we are kind of on the low end here but not an unreasonable width requirement at 50 feet. Both the White Clay Creek Management Plan and this plan, which I should reference -- it is called Watersheds, An Integrated Water Resources Plan for Chester County, Pennsylvania. Both of those plans actually recommend 100 feet, but I think in talking to the City and the constraints on development, we negotiated with the Planning and Development Department, and decided that 50 feet was probably an appropriate buffer width.

Mr. Lopata: In an urbanized area.

Mr. Gaadt: I wanted to leave with you this table that is called Desired Buffer Function and Minimum Buffer Width. I am going to leave that with you as well. It explains the importance of riparian buffers.

I want to make a couple of minor comments on other sections. There is under Steep Slopes on page 9 a minimum horizontal dimension added. It is at the top of page 9. It was an additional sentence that reads: "The minimum horizontal dimension of steep slope that is subject to this regulation is 30 feet." That was an important addition, and I think it was something that we overlooked because we thought it was already in the Code, but I think that was mentioned to the July meeting as something that needed to be added.

The other item is on page 10 under d., the seventh line down where it talks about "Trees replaced shall be at the following rate: . ." I believe the words were added "At a minimum two, one and one half inch to two inch caliper trees . . ." The "at a minimum" was added, I believe, and I think that's appropriate because there may be instances where the Department of Planning or Public Works actually recommends something higher than that depending on what the purpose is. You have a minimum standard, but if you are recommending something larger, it is nice to have that language.

Mr. Lopata: That was actually suggested by Mr. Begleiter.

Mr. Gaadt: At the bottom of that page, item f., I noticed that there has been a change in the amount of payment that would be made to the City Beautification fund. That is certainly a greater deterrent than what was in there before. I will be willing to answer questions if you have any.

Mr. Begleiter: Just a query for your opinion. On page 8, paragraph 6; you don't have any thoughts about why the City is carving out an exception so it can build utilities in these areas?

Mr. Gaadt: That is a very common clause in these types of ordinances simply because it's often very difficult to put public utilities in any other way that is cost affective. Public utilities often have to run along stream channels depending upon the type of utility of course, or across a stream channel. There is a strong recognition nationwide that it would be nice to avoid that, and if a government has a regulation or there are riparian buffers that are trying to be protected, we could think about alternatives, but to require that would certainly be onerous in most instances.

Mr. Lopata: Such as sewer lines.

Mr. Begleiter: Is there anything that should be done to prevent, excepting your explanation, to make them cause the minimal damage or minimal impairment of the area? It sounds like you are content with the way it is.

Mr. Gaadt: Yes, I am content with the way it is. I think there is the recognition that if the municipality, for example, the City has a regulation like this, that its own Public Works Department would be cognizant of these kinds of concerns.

Mr. Begleiter: It would be nice to think that. I'm not so sure that is necessarily the case.

Mr. Lopata: Ralph, let me give you an example. We have a very important sewer line project right now. The Water and Wastewater Director, Public Works, and Planning are spending a considerable amount of time making sure we minimize the environmental impact from this project because that is our responsibility.

Mrs. Jean White: 103 Radcliffe Drive. Is the stormwater management going to be allowed in the 50 foot buffer?

Mr. Lopata: Yes, they would be.

Mrs. White: So, in other words, nothing here changes. It still would not be allowed within the floodplain.

Mr. Lopata: In item 2, I put a little bracket in there to try to make sure people understand that the floodplain regulations continue as before. This is the 50 foot outside the floodplain for the floodplain areas plus for the blue line streams. The answer is yes. It has nothing to do with that regulation.

Mrs. White: So, the stormwater management is not allowed in the floodplain but could be allowed in the 50. Okay.

Mr. Lopata: That stands to reason. That is exactly what Council did.

Mrs. White: I am glad at least that it was taken out of the floodplain so we don't have happened at Paper Mill Falls.

My second question is, when we talk about clearing of existing trees and vegetation except for selective pruning, etc., page 7, 2a, is this only for new developments or will this now apply to, for example, to Christiansted and West Branch?

Mr. Lopata: Only new developments. Everything else is grandfathered. That is true of any regulation like this.

Mrs. White: I was very glad to see the perennial streams added because on the map, for example, going under New London Road is Bogy Run, and that at the moment is not a protected area so development has happened virtually on its banks. That is an important perennial stream that has been unprotected and has been encroached upon virtually to the edge of it.

Mr. Lopata: That is the point of this ordinance.

Mrs. White: I am in strong support of the riparian buffer.

Ms. Stapleford: I have two very brief things to point out. Some of the other things that the Committee has worked on are also supportive of this ordinance. Last year there was a White Clay Creek State of the Watershed Report which I will leave a copy of. Under recommendations, one of the recommendations dealt with installing buffers on the stream where there are opportunities to plant buffers, but again, just pointing out the value that the Committee placed on riparian buffers; and also, recently completed a report regarding a reforestation plan. It was really addressing the Pennsylvania portion of the watershed because that is where there is so much open land. It lists various goals and objectives of reforestation and one of them is to protect and improve water quality in stream habitats through riparian forest buffers.

Mr. Charma: A point of correction, Mr. Gaadt referred to the comment I made at the August 4<sup>th</sup> meeting and the number that was placed in the regulation is 30 feet; my suggestion was 50 feet. That is consistent with many other jurisdictions – the distance over which you measure slope on page 9.

Mr. Lopata: Joe actually suggested having a distance, I found the 30 feet in many jurisdictions.

Mr. Charma: Thirty is kind of iffy. If you think about it, right about where Mr. Begleiter is sitting from that wall to there is 30 feet. So, you are doing about 3 ½ feet in 30 feet. That is not very steep, if you can visual that on a wall, that is not a steep slope.

MOTION BY BEGLEITER, SECONDED BY McDOWELL THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND THE SUBDIVISION AND DEVELOPMENT REGULATIONS AS FOLLOWS:

1. AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS, APPENDIX III, SECTION II, BY ADDING THE FOLLOWING NEW SUBSECTION (d) AS FOLLOWS:

“(d) *RIPARIAN BUFFER PROTECTION REQUIREMENTS*. BECAUSE THE PRESERVATION OF NEWARK’S STREAMS AND STREAM BANKS IN AN UNDISTURBED NATURAL CONDITION CONSTITUTES IMPORTANT PHYSICAL, AESTHETIC, RECREATIONAL, WATER QUALITY, HEALTH, AND ECONOMIC ASSETS FOR OUR COMMUNITY, NEW CONSTRUCTION IN SUBDIVISIONS APPROVED AFTER THE DATE OF THE ADOPTION OF THIS ORDINANCE SHALL COMPLY WITH THE FOLLOWING:

- (1) IN ADDITION TO CONFORMANCE WITH THE CITY ZONING CODE ARTICLE XXVI, SPECIAL PROVISIONS FOR FLOODPLAINS AND LAND ADJOINING FLOODPLAINS, PLANS SHALL SHOW ALL PERENNIAL WATERCOURSES IDENTIFIED THROUGH SITE INSPECTION AND LABELED ON UNITED STATES GEOLOGICAL SURVEY (USGS) MAPS WITH A SOLID BLUE LINE [KNOWN AS “BLUE LINE” STREAMS – SEE ATTACHED].
- (2) WITHIN A 50 FOOT BUFFER AREA, MEASURED FROM THE TOP OF THE BANKS OF THE BLUE LINE STREAMS AND FROM 50 FEET FROM BEYOND THE OPEN FLOODWAY DISTRICT, AS DESIGNATED IN ZONING CODE, CHAPTER 32, THE LAND SHALL BE MANAGED TO ENHANCE AND MAXIMIZE THE VALUE OF THE STREAM CHANNEL AND WATER RESOURCES BY PROHIBITING THE FOLLOWING, EXCEPT FOR USES PERMITTED AND REGULATED IN CITY ZONING CODE ARTICLE XXVI, SPECIAL PROVISIONS FOR FLOODPLAINS AND LAND ADJOINING FLOODPLAINS [THE INTENT OF THIS REGULATION IS TO ESTABLISH REQUIREMENTS FOR LANDS WITHIN FIFTY FOOT BUFFER OF EACH SIDE OF THE OPEN FLOODWAY DISTRICT AND WITHIN FIFTY FEET OF EACH SIDE OF BLUE LINE STREAMS, MEASURED FROM THE TOP OF THE BANKS, EXCEPT FOR USES WITHIN THE OPEN FLOODWAY DISTRICT THAT ARE OTHERWISE AND SPECIFICALLY REGULATED]:
  - a. CLEARING OF EXISTING TREES AND VEGETATION, EXCEPT FOR SELECTIVE PRUNING THAT DOES NOT COMPROMISE VEGETATION; REMOVAL OF INDIVIDUAL TREES THAT ARE DISEASED OR MAY CAUSE DISEASE; REMOVAL OF TREES AND VEGETATION THAT ARE IN DANGER OF CAUSING DAMAGE TO STRUCTURES OR MUNICIPAL FACILITIES, OR THAT OTHERWISE MAY JEOPARDIZE PUBLIC SAFETY; AND REMOVAL OF POISON IVY AND SIMILAR VEGETATION.
  - b. SOIL DISTURBANCE BY GRADING, STRIPPING OR SIMILAR PRACTICES, INCLUDING ALTERATION OF THE COURSE OF THE STREAM.
  - c. FILLING OR DUMPING.



- (3) THESE REQUIREMENTS DO NOT APPLY TO CULVERTS UNLESS THE STREAM IS REMOVED FROM THE CULVERT AS PART OF THE SUBDIVISION PLAN.
  - (4) STREAM RESTORATION AND STABILIZATION APPROVED BY THE PUBLIC WORKS DIRECTOR IS PERMITTED.
  - (5) THE BUFFER AREA RESTRICTIONS ESTABLISHED HEREIN SHALL NOT APPLY TO AREA AND RELATED REQUIREMENTS, NOR USES PERMITTED IN THE UNDERLYING ZONING DISTRICT ADJACENT TO THE BUFFER AREA, AS SPECIFIED IN THE CITY ZONING CODE.
  - (6) SUBJECT TO THE APPROVAL OF THE CITY, THE BUFFER AREA RESTRICTIONS ESTABLISHED HEREIN SHALL NOT APPLY TO THE CONSTRUCTION OR MAINTENANCE OF PUBLIC UTILITIES AND FACILITIES INCLUDING, BUT NOT LIMITED TO, TRANSMISSION LINES, ROADS, DRAINAGE, WATER, WASTEWATER, AND SIMILAR FACILITIES.
  - (7) THE PUBLIC WORKS DIRECTOR, IN CONSULTATION WITH THE PARKS AND RECREATION DIRECTOR, SHALL REQUIRE A BUFFER AREA MANAGEMENT PLAN THROUGH THE CONSTRUCTION IMPROVEMENT PLAN REVIEW PROCESS. THIS PLAN SHALL CONSIST OF DESCRIPTIONS OF EXISTING VEGETATION AND A LANDSCAPE PLAN FOR PROPOSED NEW PLANTINGS. THE REQUIREMENT FOR NEW PLANTINGS MAY BE WAIVED ONLY IN INSTANCES WHERE THE EXISTING STAND OF TREES IS SUFFICIENTLY WIDE AND IN SUCH GOOD CONDITION TO FUNCTION AS A RIPARIAN BUFFER AS SPECIFIED IN THIS SUBSECTION.”
2. AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS, SECTION 27-20(A)(1)C., MINOR SUBDIVISIONS, BY ADDING THE FOLLOWING NEW SUBSECTION:  
  
“20. SHOW ALL UNITED STATES GEOLOGICAL SURVEY (USGS) IDENTIFIED BLUE LINE STREAMS.”
  3. AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS, SECTION 27-21(B)(1), MAJOR SUBDIVISIONS, BY ADDING THE FOLLOWING:  
  
“5. SHOW ALL UNITED STATES GEOLOGICAL SURVEY (USGS) IDENTIFIED BLUE LINE STREAMS.”

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, SHEEDY

NAY: NONE

ABSENT: OSBORNE

MOTION PASSED

### Steep Slopes

Because there had been comments from the Commissioners and the public on the steep slope protections recommendations earlier in the meeting, the Chairman called for a motion.

MOTION BY BEGLEITER, SECONDED BY SHEEDY THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND THE SUBDIVISION AND DEVELOPMENT REGULATIONS AS FOLLOWS:

1. AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS, SECTION 27-3(f)(2), BY DELETING THE APPLICABLE LANGUAGE THAT READS AS FOLLOWS:

“CONSTRUCTION AND BUILDING ON PROPERTIES WITH SLOPES EXCEEDING 25% SHALL NOT BE PERMITTED, EXCEPT WITH THE APPROVAL OF THE PUBLIC WORKS DIRECTOR, UPON CONSIDERATION OF THE GEOLOGICAL, HYDROLOGICAL, AND SOIL CONDITIONS OF THE SITE.”

AND REPLACE IT WITH THE FOLLOWING:

“CONSTRUCTION AND BUILDING ON PROPERTIES WITH SLOPES EXCEEDING 25% SHALL NOT BE PERMITTED. CONSTRUCTION AND BUILDING ON PROPERTIES WITH SLOPES EXCEEDING 15% TO 25% SHALL BE PERMITTED ONLY WITH THE APPROVAL OF PUBLIC WORKS DIRECTOR, UPON CONSIDERATION OF THE GEOLOGICAL, HYDROLOGICAL, AND SOIL CONDITIONS OF THE SITE. THE MINIMUM HORIZONTAL DIMENSION OF STEEP SLOPE THAT IS SUBJECT TO THIS REGULATION IS 30 FEET.”

2. AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS, SECTION 27-20(a)(1)c., BY REVISING SUBSECTION 10 SO THAT IT READS AS FOLLOWS [NEW LANGUAGE IN ITALICS]:

“10. CONTOURS AT INTERVALS OF FIVE FEET; *AREAS WITH SLOPES BETWEEN 15% AND 25% AND GREATER THAN 25% SHALL BE IDENTIFIED.*”

3. AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS, SECTION 27-21, MAJOR SUBDIVISIONS, (b)(1)a.3. BY REVISING SUBSECTION (XI), SO THAT IT READS AS FOLLOWS [NEW LANGUAGE IN ITALICS]:

“(XI) CONTOURS AT INTERVALS OF TWO FEET; *AREAS WITH SLOPES BETWEEN 15% AND 25% AND GREATER THAN 25% SHALL BE IDENTIFIED.)*”

VOTE: 6-0

AYE: BEGLEITER, BOWMAN, BROWN, DRESSEL, McDOWELL, SHEEDY

NAY: NONE

ABSENT: OSBORNE

MOTION PASSED

### **Landscaping, Landscape Screening, Mature Tree Protection**

Mr. Lopata: This is intended to develop a more extensive “valued” trees ordinance and, perhaps most importantly, much more detailed tree protection measures during construction, that were developed by the Parks Department. We also suggest a pretty substantial penalty for removing valued trees – up to \$5,000 per tree; and then there is a section regarding parking. The most important thing in that section, in my view, is for large parking lots in addition to requiring the new landscaping that is specified here (and some of which is in our current ordinance) is to also requires a sequence of berms or walls in lots that are 125 spaces or larger so that every so many feet there will be a real nice landscaped break in large parking facilities.

This is a meaty set of improvements to our existing ordinance. I think these are a very significant set of changes that will make for a more attractive community and will enhance the environment – the kinds of things that Linda and John have already talked about.

Ms. Dressel: Is there anything in here that is talking about the types of trees that are going to be required?

Mr. Lopata: We have a long section in the ordinance now. There is a species section that was done by our Parks Department and updated relatively recently – street trees, deciduous trees.

Ms. Dressel: Street trees are my big concern primarily because I live in one of those new developments and I absolutely abhor the trees that they put in my front yard. They keep dying. That is not going to be included here, this is only for the existing trees.

Mr. Lopata: This is expanding our regulations, but the tree species is not under review tonight.

Mr. Begleiter: Mr. Chairman, I just had a couple of quick comments. One of them is a semi-snide comment directed at the City Council. Obviously, on page 10, paragraph f. I just want to make note, with great pleasure, the fact that in this paragraph we refer to the \$5,000 payment as, “the developer shall make a payment to the City’s Beautification fund . . .” but when we were talking about electric it became impact assessment fee. That is what I was trying to get at, that we don’t need to characterize things negatively.

Mr. Lopata: That snide comment would be much better directed at me, Ralph, since it is something I wrote . . .

Mr. Begleiter: It is directed at the people who are going to make that decision.

I would like to just mention two other things. On page 12, the new paragraph a. – just so you know, Roy and I talked about a lot of these and we discussed some possible changes, one of which I will highlight in a second – I just wanted to raise the question of whether this will apply to raised parking or a parking garage in the future if one were to arise in the City? I’m not so sure it wouldn’t be a bad thing to have this kind of landscaping requirement apply in those situations as well. It would certainly enhance the appearance of a parking garage if it had some trees on top or some landscaping over the edges or the walls.

Mr. Lopata: It doesn’t say it doesn’t.

Mr. Begleiter: It doesn’t say it would be okay for us too . . .

Mr. Lopata: We would have to work on that. Sometimes there are other issues, weight and drainage and so on.

Mr. Begleiter: I understand there would be different considerations and you wouldn’t want to have as much soil and all that, but it could apply, so in the design phase is this something that the City could look at?

Mr. Lopata: That is something that has been encouraged around the country to put landscaping on upper levels.

Mr. Begleiter: On page 13, in discussions Roy and I have had, what I think is an important improvement from the last time you saw this document, in paragraph c. and then again in paragraph d., the walls previously had been indicated at a minimum height of 36 inches and we added a maximum height of 48 inches. I was concerned that pedestrians walking to their vehicles at night or cutting through a parking garage, if the wall were higher than about four feet or so, it is possible that something could happen to them in the parking lot and nobody would ever notice because it was behind the wall. So, we did take care of that possibility. We hope that it never happens but it is good that it is in here.

Ms. Sheedy: What is a “compartmentalization of decay in tree test,”? Does that mean that somebody has to certify that your tree is sick?

Mr. Lopata: Yes.

Ms. Sheedy: At the top of page 11, at the end of provision f., as I understand it, this section talks about if a tree has to be taken out, not if it is taken out without approval. If an arborist says it has to be taken out, then the developer shall remove the tree, make the contribution to the City's Beautification fund and follow the same replacement requirements?

Mr. Lopata: Yes.

Ms. Sheedy: Am I correct that that means that whether a developer takes out a tree without approval and just says, "Oh we chopped it down." or goes through the outlined process, they still have to pay the \$5,000.

Mr. Lopata: You are right. That should be changed because that is not the intent.

Ms. Sheedy: That seems wrong to me.

Mr. Lopata: "Make the contribution to the City's Beautification fund," should be removed here because this is a case where they are going through the process.

Ms. Sheedy: It shouldn't require a penalty.

Ms. Dressel: It is starting with, "In addition, if during construction a valued tree which is identified to be preserved is damaged, the Parks and Recreation Director may require, "to have an independent certified arborist. . ." then, "If the tree can be repaired. . ." "If it is determined that the tree must be removed. . ." This means that it was damaged after it had been designated as a valued tree, so I don't think it should be removed.

Mr. Lopata: I guess we wrote it right the first time.

Ms. Dressel: I think if a tree is determined not to be a valued tree, then they should not be penalized, which is what you were thinking was happening.

Mr. Lopata: You are right.

Ms. Brown: In f. on page 10, is it clear enough that we are talking about per tree here?

Mr. Lopata: I think it is clear.

Ms. Brown: Just so we have made that extremely clear that it is per tree.

Mr. Bowman: We will open it to comment to the public.

Mr. Chris Locke: 604 Cambridge Drive. Going into this language on the bottom of page 10, sub-paragraph f., when you look at this language, "In addition, if during construction a valued tree which is identified to be preserved is damaged the Parks and Recreation. . .", I get the \$5,000 if you intentionally knock down a tree. I get that, but if this tree is damaged by no fault of the developer, there should be some determination by the Parks and Recreation Department.

Mr. Lopata: I think this is implicit here that it is acts of man not lightning.

Mr. Locke: Then you should say that. That is not what it says. This is extremely open ended.

Ms. Stapleford: 802 Dallam Road. Again, just to be sure we have provided all the support. Recommendation, again, in the State of the Watershed Report, "Reverse the decline in forest cover in the watershed, the reforestation programs. . ." So, the importance of trees and the reforestation plan itself, it lists 8 other impacts or values of trees." And then it states, ". . . improve and conserve water quality and quantity, maintain stream flow and maintain or improve water quality, protect or improve base

flows in stream habitat through recharge, protect and improve water quality in stream habitat through slope protection, sustain biodiversity through habitat linkage and management, and protect fragile wildlife habitats and increase fish and wildlife diversity from the watershed.” Those are all things that are supported by forest cover, by tree cover.

I did have a question on page 12, on the parking part, “Every 25 spaces shall include raised and curbed landscape islands.” I guess I am questioning why they have to be curbed or can they at least be curbed, raised and curbed with some breaks so that you can get infiltration from the parking lot into these areas where the trees and shrubberies are planted. It would cut down on stormwater and it would water the vegetation.

Mr. Lopata: You want to take out the word curbed?

Ms. Stapleford: Or insert, “with breaks.”

Mr. Begleiter: Take those expensive curbs out.

Mr. Lopata: I don’t like the cars driving into landscaped islands.

Ms. Stapleford: You can have curbs with breaks in it.

Mr. Bowman: Or pipes through the curb to allow water to infiltrate into the tree.

Mr. Lopata: This doesn’t preclude that.

Ms. Stapleford: When it said raised and curbed, I picture a continuous curb as opposed to the curbing at the edge of the University lot which has the bumpers for the tires but allows water to infiltrate freely. Water can go underneath some of the concrete.

Mr. Begleiter: The issue is the design of the curb.

Ms. Dressel: Just remove “curbed.”

Mr. Begleiter: You can’t remove curbed because Roy is right, you don’t want cars driving over the landscaping which is what would happen.

Ms. Brown: Why don’t we do what she just said, allow insert after curb that allows water infiltrate freely.

Mr. Lopata: We could insert, “. . . and curbed landscaped islands designed to allow water to infiltrate . . .”

Mr. Charma: You could say, in lieu of raised landscaped islands employ low impact design techniques for stormwater management. If you say, raised, curbed islands, that is what you have to have. Low impact design techniques for stormwater management.

Mr. Lopata: Is that to be inserted before the word islands? “Every 25 spaces shall include low impactive design techniques . . . ,” then what?

Mr. Charma: Raised and curbed islands.

Mr. Lopata: I thought we are taking that out.

Mr. Charma: No don’t take it out because there are some instances where it doesn’t work. What I am getting at is you should take every opportunity to get every drop of water off the pavement as soon as you can.

Mr. Lopata: Or low impactive design techniques. Now I get it.

Ms. Dressel: Can we read that again, please?

Mr. Lopata: “Every 25 spaces shall include raised and curbed islands or low impactive design techniques designed to ensure a smooth flow of traffic and stormwater infiltration.” Is that okay because it is not just for traffic any more.

Ms. Dressel: You are still leaving in landscaped, though, right?

Mr. Lopata: Yes, I put that in. “raised and curbed landscape islands.”

Mr. Begleiter: It isn’t all that important but a way to fix the grammatical problem would be to put, “. . . to ensure a smooth flow of traffic every 25 spaces shall include raised and curbed landscaped islands designed for low . . .

Mr. Charma: You can’t have raised islands “and.” You need “or.”

Mr. Lopata: I think I have the idea. I’ll work on it.

Mr. Begleiter: I was just trying to get the traffic away from the water.

Mrs. White: I would like to share a book that I referred to last time entitled The Affective Manifest Construction Activities on Survival of Deciduous Trees in New Castle County, Delaware written by Peter O’Rourke in 1976. There is something in here that would be good to put into this. He studied 886 deciduous trees over a three or four year period in 11 developments. He found out that would be useful to put in here without going into more detail is that the single most important thing that had to do with the survival of trees other than the species was whether groups of trees were kept together. In other words you can’t protect this one and this one, but where you had groups of trees, they were more likely to stay together. So, I feel that something would be useful to put in here, “Where possible, keep groups of trees together.”

Mr. Lopata: That is in the ordinance, Jean.

Mrs. White: Can you tell me where it is?

Mr. Lopata: It is in the “Community Assets” section of the Subdivision Regulations

Mrs. White: I have never seen it. I am not disputing that it is there, but I feel that it would be useful.

Another thing that I brought out before, this is page 12, this is was committee that both I and Joe Charma were on. This is 4a. The landscape Island was before 330 sq. ft. per 25 parking places and now it is down to 250 ft. I know there are some other additions, but I don’t know that those other additions mitigate the aspect that you are changing the size of the landscape islands. I would like to keep it at the 3330 sq. ft.

Mr. Lopata: The idea was to have smaller islands and then as I explained to you before, require that 15% of the total parking facility be landscaping not including the buffer strips. I drew it out myself to compare the two and this has more landscaping than the current regulations.

Mrs. White: I think it is very good to have parking spaces closer to shade trees, on the other hand, I object to little tiny islands.

Mr. Lopata: These are pretty close in size. 330 to 250 is hardly noticeable.

Mrs. White: There is another thing that I think would be useful. I actually think that modern parking lots with a little island (inaudible) uninteresting and ugly and I would like to have something added, sort of like a site plan approval like we have for developments, where they can do something a little bit different and there is a section in the Code for developments, but a site plan approval for just parking lots. An interesting parking lot, for example, is the one behind Old College off of N. College where the old ROTC building. There you have a really interesting parking lot with a big Sycamore tree. That tree was probably there to begin with and they modified the parking lot. I

would like to have something in there that shows an alternative could be done that still got lots of trees and the 15 %.

Mr. Lopata: We have an option clause in the Code now, Jean.

Mrs. White: I realize that is true but I did not think it was for the parking lots.

Mr. Lopata: It covers the whole landscape ordinance.

Mrs. White: I would like to refer to it in the text because they are separated and I think it would be useful to refer to have a sentence in there.

Mr. Lopata: We also have new related language at page 11, item h. It reads: "The goal of each review is to ensure that through a combination of preservation of preservation and landscaping, the final landscaping, the final landscape and tree preservation plan produces a diversified and sustainable urban landscape."

Mrs. White: It is nice to have that in there but what do we see? I don't think that we see interesting, shady parking lots being made. It may be in there.

Mr. Lopata: That is the point of this whole suggested change. I think this is going to make for a much more interesting shaded parking lot.

Mrs. White: I hope so. I think this would be an appropriate place to put in root guards for street trees because root guards that are in some counties in Pennsylvania when you put them right next to the sidewalks, they keep the roots from lifting up the sidewalk and this is in their ordinance and I think this would be a useful place to put it in.

I also think that after the two years in which the developer gets the bond back that if the trees die later and they have the bond back, that they should be required to put trees in that have died and have dissipated after that two years because that doesn't happen.

Finally, I think it would be good if the City would follow its own rules. An example is this idea of the buffer along the street was already in the Code when the City redid Lot #1 and no buffer was put along Delaware Avenue. And, I think that there are other examples that the City should follow its own Code. I think the City should set an example for the developers. I think if I were a developer, I would resent that I as a developer had to follow the Code but the City does not.

Ms. Brown: Is the \$5,000 a big enough deterrent?

Mr. Lopata: We raised it from \$1,200.

Ms. Brown: But, I am just saying, is it a big enough deterrent?

Mr. Lopata: It is \$5,000 for a tree. We will find out. Remember, we don't have it now so it remains to be seen.

Mr. Begleiter: We are going from zero to \$5,000 now.

Mr. Lopata: It is a big jump.

Ms. Brown: I just question whether \$5,000 when you are talking about a \$30 million building or \$5 million building.

Mr. Lopata: It is a lot of money to most people, even \$5,000.

Ms. Brown: Okay, if we think it is a big enough amount.

Mr. Lopata: Well, I think so at the moment. That remains to be seen. That doesn't mean a tree isn't going to be damaged some day, but then we will have a fee we are going to get and plus replacement trees.

MOTION BY BEGLEITER, SECONDED BY DRESSSEL THAT THE PLANNING COMMISSION RECOMMENDS THAT CITY COUNCIL AMEND THE ZONING CODE AND SUBDIVISION AND DEVELOPMENT REGULATIONS AS FOLLOWS:

1. AMEND ZONING CODE SECTION 32-87(g)(5) BY DELETING THE EXISTING LANGUAGE WHICH READS AS FOLLOWS:

“(5) ALL MAJOR SUBDIVISION PLANS SHALL FOR THE PORTIONS OF THE SITE TO BE DEVELOPED INCLUDE MAPPING OF ALL TREES OF 24” DBH (DIAMETER AT BREAST HEIGHT, THAT IS, MEASURED AT 4.5 FEET ABOVE THE GROUND) OR GREATER AND SHALL INCLUDE THE SIZE OF TREE CANOPIES, AND PLANS FOR THE SAVING OR REMOVAL OF THESE TREES.”

AND REPLACE IT WITH THE FOLLOWING:

“(5) TO MEET THE PURPOSES OF THIS ARTICLE, ALL MAJOR SUBDIVISIONS, EXCEPT AS OTHERWISE SPECIFIED HEREIN, SHALL INCLUDE A LANDSCAPE AND TREE PRESERVATION PLAN INCLUDING THE FOLLOWING:

- a. ACCURATE FOR LOCATION PURPOSES MAPPING OF ALL TREES 18” DBH (DIAMETER AT BREAST HEIGHT, MEASURED AT 4.5 FEET ABOVE THE GROUND) WITHIN THE PORTIONS OF THE SITE TO BE DEVELOPED. THESE TREES SHALL BE DESIGNATED AS VALUED TREES.
- b. SIZE OF EXISTING TREE CANOPIES WITHIN THE PORTIONS OF THE SITE TO BE DEVELOPED.
- c. LANDSCAPING AND TREE PLANTING AS SPECIFIED IN THIS ARTICLE.
- d. TREE PRESERVATION SHALL BE REQUIRED TO LIMIT REMOVAL OF VALUED TREES AS DEFINED HEREIN, TO A MAXIMUM OF 25% OF SUCH TREES ON THE SITE. ADDITIONAL VALUED TREES MAY BE REMOVED AND REPLACEMENT TREES REQUIRED TO BE PLANTED PRIOR TO THE ISSUANCE OF CERTIFICATES OF OCCUPANCY, AS DIRECTED BY THE PARKS AND RECREATION DIRECTOR. SUCH VALUED TREE REMOVAL MAY BE BASED ON A COMPARTMENTALIZATION OF DECAY IN TREE (CODIT) TEST THAT MAY BE REQUIRED BY THE PARKS AND RECREATION DIRECTOR. TREES REPLACED SHALL BE AT THE FOLLOWING RATE: AT A MINIMUM TWO, ONE AND ONE HALF INCH TO TWO INCH CALIPER TREES FOR EVERY SIX INCHES OF CALIPER OF THE VALUED TREE TO BE REMOVED OR FIVE LARGE SHRUBS OR ANY COMBINATION OF THE TWO CATEGORIES TO BE DETERMINED BY THE PARKS AND RECREATION DIRECTOR.
- e. PRIOR TO DEMOLITION, CLEARING, GRADING OR CONSTRUCTION AN AREA AROUND THE VALUED TREES AND ANY OTHER TREES DESIGNATED FOR PRESERVATION SHALL BE ESTABLISHED TO PROTECT SUCH TREES AND THEIR CRITICAL ROOT ZONE, DEFINED BY A CIRCLE ON THE GROUND BENEATH THE TREE(S) HAVING A CENTER POINT AT THE MID-POINT OF THE TRUNK, EXTENDING TO THE DRIPLINE OF THE TREE OR AS FAR FROM THE TREE’S ROOT FLARE AS POSSIBLE. FENCING SHALL BE ERECTED TO PROTECT THE CRITICAL ROOT ZONE AND TREE USING THE FOLLOWING MATERIALS AND METHODS:
  1. 6’ HIGH CHAIN LINK FENCE.
  2. MOUNTED ON TWO INCH GALVANIZED POSTS DRIVEN IN THE GROUND TO A DEPTH OF TWO FEET AND AT NO MORE THAN TEN FOOT CENTERS OR IF HARD SURFACES (ASPHALT,



CONCRETE, ETC.) ARE PRESENT, MOUNTED ON METAL PANEL FOOT STANDS.

3. PROVIDE A THREE FOOT WIDE OPENING FOR TREE CARE AND MAINTENANCE.
4. FENCING TO REMAIN IN PLACE UNTIL THE FINAL INSPECTION OF THE PROJECT.
5. TWO WARNING SIGNS ARE TO BE PROMINENTLY DISPLAYED ON EACH PROTECTIVE FENCE. THE SIGNS SHALL BE A MINIMUM OF TEN BY TWELVE INCHES AND READ AS FOLLOWS:

TREE PROTECTION ZONE  
THIS FENCE SHALL NOT BE REMOVED

6. THE SIGNS ARE TO BE PRODUCED FROM A MATERIAL THAT WILL NOT WEATHER, FADE OR BECOME DISLODGED.
  7. ANY WORK WITHIN THE TREE PROTECTION ZONE REQUIRES APPROVAL FROM THE PARKS AND RECREATION DIRECTOR.
  8. NO STORAGE OF MATERIALS, TOPSOIL, VEHICLES, CONSTRUCTION DEBRIS OR OTHER EQUIPMENT SHALL BE PERMITTED WITHIN THE TREE PROTECTION ZONE.
  9. TREE PROTECTION ZONES MUST BE CLEARLY AND ACCURATELY DISPLAYED ON ALL LANDSCAPE PLANS.
- f. IF DURING CONSTRUCTION A VALUED TREE WHICH IS IDENTIFIED TO BE PRESERVED IS REMOVED WITHOUT THE PARKS AND RECREATION DIRECTOR'S AUTHORIZATION, THE DEVELOPER SHALL MAKE A PAYMENT TO THE CITY'S BEAUTIFICATION FUND IN THE AMOUNT OF \$5,000 AND FOLLOW THE REPLACEMENT REQUIREMENT AS LISTED IN (5)(D) ABOVE. IN ADDITION, IF AS A RESULT OF CONSTRUCTION A VALUED TREE WHICH IS IDENTIFIED TO BE PRESERVED IS DAMAGED THE PARKS AND RECREATION DIRECTOR MAY REQUIRE THE DEVELOPER TO HAVE AN INDEPENDENT CERTIFIED ARBORIST EVALUATE THE TREE AND PROVIDE A WRITTEN REPORT AND RECOMMENDATION ON THE TREE'S CURRENT CONDITION AND ITS FUTURE DISPOSITION. IF THE TREE CAN BE REPAIRED, THE DEVELOPER WILL BE RESPONSIBLE TO DO SO ADHERING TO THE ARBORIST'S ANALYSIS AND/OR ACCEPTED INTERNATIONAL SOCIETY OF ARBORICULTURAL STANDARDS. IF IT IS DETERMINED THAT THE TREE MUST BE REMOVED, THE DEVELOPER SHALL REMOVE THE TREE, MAKE THE CONTRIBUTION TO THE CITY'S BEAUTIFICATION FUND AND FOLLOWING THE SAME REPLACEMENT REQUIREMENTS.
- g. EVERY EFFORT SHALL BE MADE TO AVOID PLACING UTILITIES WITHIN THE CRITICAL ROOT ZONE OF TREES IDENTIFIED TO BE PRESERVED. TO PRESERVE THE NATURAL ENVIRONMENT AND PROTECT DESIGNATED VALUED TREES, TUNNEL BORINGS SHALL BE REQUIRED WHEN UNDERGROUND UTILITIES MUST BE PLACED WITHIN THE CRITICAL ROOT ZONE OF SAID VALUED TREES. THE FOLLOWING TUNNEL BORING DEPTHS ARE TO BE OBSERVED.
1. TRUNK DBH LESS THAN 12 INCHES – 24 INCHES.
  2. TRUNK DBH 12 INCHES OR MORE – 36 INCHES.
- h. LANDSCAPE AND TREE PRESERVATION PLANS SHALL BE EVALUATED BY THE PARKS AND RECREATION DEPARTMENT ON A CASE BY CASE BASIS THAT SHALL ENTAIL EXAMINING THE EXISTING TREE RESOURCES ON THE SITE AND TAKE INTO ACCOUNT THE DYNAMICS OF TREES AND CONSTRUCTION IMPACTS, IN ORDER TO CREATE A PLAN THAT RESULTS IN A BALANCED MIXTURE OF TREE SPECIES AND TREE AGE. THE GOAL OF EACH REVIEW IS TO

INSURE THAT THROUGH A COMBINATION OF PRESERVATION AND LANDSCAPING, THE FINAL LANDSCAPE AND TREE PRESERVATION PLAN PRODUCES A DIVERSIFIED AND SUSTAINABLE URBAN LANDSCAPE.”

2. AMEND ZONING CODE SECTION 32-87(g) BY ADDING A NEW SUBSECTION (6) TO READ AS FOLLOWS:

“6. IF REQUESTED BY THE PARKS AND RECREATION DIRECTOR, MINOR SUBDIVISIONS SHALL INCLUDE AN EXISTING TREE PROTECTION PLAN AS DESCRIBED IN SUBSECTION (5)E. ABOVE.”

3. AMEND ZONING CODE SECTION 32-87(f)(4), BY DELETING SUBSECTION A. WHICH READS AS FOLLOWS:

“a. EVERY 25 SPACES SHALL INCLUDE RAISED AND CURBED LANDSCAPED ISLANDS DESIGNED TO ENSURE A SMOOTH FLOW OF TRAFFIC. SUCH LANDSCAPED ISLANDS SHALL TOTAL 330 SQUARE FEET OF AREAS PER 25 PARKING SPACES THAT MAY BE DIVIDED INTO ISLANDS OR INTO CONTINUOUS STRIPS WITHIN THE TOTAL AREA SET ASIDE FOR PARKING AND ACCESS TO PARKING. EACH ISLAND OR STRIP SHALL CONTAIN TURF AND GROUND COVER WHICH SHALL FORM A CONTINUOUS MAT OF VEGETATION WITHIN ONE YEAR OF INSTALLATION; TURF SHALL NOT EXCEED 50% OF THE TOTAL LANDSCAPED ISLAND OR STRIP. EACH 330 SQUARE FEET OF LANDSCAPED ISLANDS OR STRIPS SHALL HAVE A MINIMUM OF TWO SHADE TREES WITH A MINIMUM ONE AND ONE HALF CALIPER AND 10 FEET IN HEIGHT. TWO ORNAMENTAL TREES WITH A MINIMUM ONE AND ONE-HALF INCH CALIPER AND EIGHT FEET IN HEIGHT MAY BE SUBSTITUTED FOR EACH SHADE TREE.”

AND REPLACING THIS LANGUAGE WITH FOLLOWING:

“a. EVERY 25 SPACES SHALL INCLUDE CURBED LANDSCAPED OR LOW IMACT DESIGNED ISLANDS DESIGNED TO ENHENCE STORMWATER INFILTRATION AND TO ENSURE A SMOOTH FLOW OF TRAFFIC. SUCH LANDSCAPED ISLANDS SHALL TOTAL A MINIMUM OF 250 SQUARE FEET OF AREA PER 25 PARKING SPACES THAT MAY BE DIVIDED INTO ISLANDS OR INTO CONTINUOUS STRIPS WITHIN THE TOTAL AREA SET ASIDE FOR PARKING AND ACCESS TO PARKING. EACH ISLAND OR STRIP SHALL CONTAIN TURF AND GROUND COVER WHICH SHALL FORM A CONTINUOUS MAT OF VEGETATION WITHIN ONE YEAR OF INSTALLATION; TURF SHALL NOT EXCEED 50% OF THE TOTAL LANDSCAPED ISLAND OR STRIP. EACH 250 SQUARE FEET OF LANDSCAPED ISLANDS OR STRIPS SHALL HAVE A MINIMUM OF ONE SHADE TREE WITH A MINIMUM TWO AND ONE HALF INCH CALIPER AND 12 FEET IN HEIGHT AT PLANTING, AND A MINIMUM 12 INCH DIAMETER AT BREAST HEIGHT (DBH) AT MATURITY. SHADE TREES SHALL BE INSTALLED SO THAT NO PARKING SPACE SHALL BE MORE THAN 75 FEET FROM A TREE TRUNK. PUBLIC WORKS DEPARTMENT APPROVED UNDER DRAINS, TO REMOVE EXCESS WATER, SHALL BE INSTALLED AT LANDSCAPED ISLANDS AND STRIPS. AREAS USED FOR LANDSCAPED ISLANDS OR STRIPS SHALL BE PROVIDED IN

AN AMOUNT EQUIVALENT TO A MINIMUM OF 15% OF THE TOTAL PAVED PARKING FACILITY, NOT INCLUDING BUFFER AREAS SEPARATING THE PARKING FACILITY FROM ADJOINING STREETS OR PROPERTIES.”

4. AMEND ZONING CODE SECTION 32-87(f)(4) BY DELETING SUBSECTION c., WHICH READS AS FOLLOWS:

“c. OFF-STREET PARKING AREAS CONTAINING 25 TO 125 SPACES SHALL BE SET BACK FROM EACH ABUTTING STREET RIGHT-OF-WAY BY A LANDSCAPED STRIP AT LEAST 10 FEET WIDE; WITH AT LEAST 50% OF THIS REQUIRED AREA COMPRISED OF PLANTS A MINIMUM OF 36 INCHES IN HEIGHT WITHIN ONE YEAR OF INSTALLATION; LANDSCAPED BERMS CAN BE USED TO MEET THIS HEIGHT REQUIREMENT; AND WITH ONE 2.5 INCH CALIPER STREET TREE, A MINIMUM OF 12 FEET IN HEIGHT, SPACED A MINIMUM OF 30 FEET AND A MAXIMUM OF 40 FEET APART.”

AND REPLACING THIS LANGUAGE WITH FOLLOWING:

“c. OFF-STREET PARKING AREAS CONTAINING 25 TO 125 SPACES SHALL BE SET BACK FROM EACH ABUTTING STREET RIGHT-OF-WAY BY A LANDSCAPED STRIP AT LEAST 10 FEET WIDE; CONTAINING ONE 2.5 INCH CALIPER STREET TREE, A MINIMUM OF 12 FEET IN HEIGHT, SPACED A MINIMUM OF 30 FEET AND A MAXIMUM OF 40 FEET APART; AND ALSO CONTAINING EVERGREEN SHRUBS WITH ONE 24 INCH MINIMUM IN HEIGHT SHRUB PER THREE LINEAL FEET EXPECTED TO REACH A MINIMUM HEIGHT OF 36 INCHES AND A MINIMUM SPREAD OF 30 INCHES WITHIN THREE YEARS OF PLANTING; LANDSCAPED BERMS CAN BE USED TO MEET THIS HEIGHT REQUIREMENT AND SUCH BERMS MAY CONSIST OF SOLID WALLS OR EARTH BERMS INCORPORATED INTO THE LANDSCAPING, AT A HEIGHT OF 36 TO 48 INCHES, EXCEPT WHERE SUCH INSTALLATION CONFLICTS WITH SIGHT DISTANCE REQUIREMENTS FOR MOTOR VEHICLES. IF WALLS ARE USED, COMPATIBILITY IN DESIGN WITH THE FACADES OF THE PROPOSED OR EXISTING BUILDINGS SHALL BE REQUIRED. WALLS MUST HAVE ONE-THIRD OF THEIR SURFACE AREA THAT FACE OFF-SITE COVERED BY PLANT MATERIALS.”

5. AMEND ZONING CODE SECTION 32-87(f)(4) BY DELETING SUBSECTION d. WHICH READS AS FOLLOWS:

“d. OFF-STREET PARKING AREAS CONTAINING MORE THAN 125 SPACES SHALL BE SET BACK FROM EACH ABUTTING STREET RIGHT OF WAY BY A LANDSCAPED STRIP AT LEAST 20 FEET WIDE AND SHALL CONFORM TO ALL OTHER DESIGN SPECIFICATIONS IN SUBSECTION C. ABOVE.

BY REPLACING THIS LANGUAGE WITH THE FOLLOWING:

“d. OFF-STREET PARKING AREAS CONTAINING MORE THAN 125 SPACES SHALL BE SET BACK FROM EACH ABUTTING STREET RIGHT OF WAY BY A LANDSCAPED STRIP AT LEAST 20 FEET WIDE AND SHALL CONFORM TO ALL DESIGN SPECIFICATIONS IN SUBSECTION C. ABOVE. SUCH AREAS, IN ADDITION, SHALL INCLUDE LANDSCAPE SCREENS NOT LESS THAN 120 FEET APART PARALLEL WITH

PARKING AREA VEHICLE TRAVEL LANES; SUCH SCREENS SHALL BE AT LEAST 6 FEET WIDE, CONTAINING EVERGREEN SHRUBS WITH ONE 24 INCH MINIMUM IN HEIGHT SHRUB PER THREE LINEAL FEET, EXPECTED TO REACH A MINIMUM HEIGHT OF 36 INCHES AND A MINIMUM SPREAD OF 30 INCHES WITHIN THREE YEARS OF PLANTING; THESE AREAS MAY BE COMBINED WITH OTHER REQUIRED PARKING AREA PLANTINGS. LANDSCAPED BERMS CAN BE USED TO MEET THIS REQUIREMENT AND SUCH BERMS MAY CONSIST OF WALLS, INCORPORATED INTO THE LANDSCAPING, AT A HEIGHT OF 36 TO 48 INCHES, EXCEPT WHERE SUCH INSTALLATION CONFLICTS WITH SIGHT DISTANCE REQUIREMENTS FOR MOTOR VEHICLES. IF WALLS ARE USED, COMPATIBILITY IN DESIGN WITH THE FACADES OF THE PROPOSED OR EXISTING BUILDINGS SHALL BE REQUIRED. WALLS MUST HAVE ONE-THIRD OF THEIR SURFACE AREA THAT FACE PARKING AREAS COVERED BY PLANT MATERIALS.”

6. AMEND ZONING CODE SECTION 32-87(f)(1) BY ADDING TO THE EXISTING LANGUAGE WHICH READS:

“(1)ALL PORTIONS OF IMPROVED PROPERTIES, EXCEPT AS NOTED BELOW, WHICH ARE NOT USED FOR BUILDINGS, STRUCTURES, OFF-STREET PARKING AND LOADING, SIDEWALKS, MALLS, OR SIMILAR PURPOSES, SHALL BE APPROPRIATELY LANDSCAPED WITH TURF, SHRUBS, TREES, AND OTHER GROUND COVER IN SUCH A MANNER AS TO MINIMIZE EROSION AND STORMWATER RUNOFF AND TO IMPROVE THE GENERAL APPEARANCE OF THE PROPERTY. SUCH LANDSCAPING MAY EXTEND INTO THE BUILDING SETBACK LINE, REAR OF SIDE YARD,”

BY ADDING THE FOLLOWING BEFORE THE LAST SENTENCE:

“SUCH AREAS SHALL, IN ADDITION, INCLUDE ONE SHADE TREE WITH A MINIMUM 2.5 INCH CALIPER AND 12 FEET IN HEIGHT FOR EVERY 700 SQUARE FEET.”

7. AMEND SUBDIVISION AND DEVELOPMENT REGULATIONS SECTION 27-21, MAJOR SUBDIVISIONS, (b)(1) BY DELETING SUBSECTIONS (XII) AND (XIII) WHICH READ AS FOLLOWS:

“(XII) LOCATION OF PROPOSED LANDSCAPE SCREENING.  
(XIII) THE GENERAL LOCATION OF MATURE TREE STANDS, IF ANY.”

AND REPLACING THIS LANGUAGE WITH THE FOLLOWING (AND RENUMBERING THE FOLLOWING SUBSECTION AS REQUIRED):

“(XII) ON A PLAN WITH CONTOURS AT INTERVALS OF TWO FEET SHOW ALL LANDSCAPING AND THE TREE PLANTINGS, MATURE TREES AND COMMUNITY ASSETS AS SPECIFIED IN CHAPTER 32, ZONING, ARTICLE XXV, LANDSCAPE SCREENING AND TREATMENT, AND COMMUNITY ASSETS, APPENDIX IX, OF THIS CHAPTER.”

VOTE: 6-0

AYE: BEGLEITER, BOWMAN,BROWN, DRESSEL, McDOWELL, SHEEDY  
NAY: NONE  
ABSENT: OSBORNE

MOTION PASSED

There being no further business, the meeting adjourned at 9:45 p.m.

Respectfully Submitted,

Elizabeth Dowell  
Secretary to Planning Commission